

# SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1909.

No. 641.

THE INTERSTATE COMMERCE COMMISSION,  
APPELLANT,

VS.

CHICAGO, BURLINGTON AND QUINCY RAILROAD COM-  
PANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR  
THE NORTHERN DISTRICT OF ILLINOIS.

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1 Pleas in the Circuit Court of the United States for the Northern District of Illinois, Eastern Division, in chancery sitting, at the United States court room in the city of Chicago, in said district and division, before the Honorable Peter S. Grosscup, the Honorable Francis E. Baker, and the Honorable Christian C. Kohlsaatt, circuit judges of the United States for the Seventh Judicial Circuit, on Monday, the thirteenth day of September, being one of the days of the regular July term of said court, begun Monday, the fifth day of July, in the year of our Lord one thousand nine hundred and nine and of our independence the one hundred and thirty-fourth.

H. S. STODDARD, *Clerk.*

2 In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

CHICAGO, BURLINGTON AND QUINCY RAILROAD Company, The Chicago Rock Island and Pacific Railway Company, Chicago and Northwestern Railway Company, Chicago, Milwaukee and St. Paul Railway Company, The Atchison, Topeka and Santa Fe Railway Company, The Missouri Pacific Railway Company, Union Pacific Railroad Company, Wabash Railroad Company,

In Chancery, No. 29472.

*vs.*

THE INTERSTATE COMMERCE COMMISSION.

Be it remembered that on this day, to wit, on the eighteenth day of May, 1909, come the complainants in the above-entitled cause, by their solicitors, and filed in the clerk's office of said court their certain bill of complaint in words and figures following, to wit:

3 No. 29472.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

CHICAGO, BURLINGTON & QUINCY RAILROAD Company, The Chicago, Rock Island & Pacific Railway Company, Chicago & North Western Railway Company, Chicago, Milwaukee & St. Paul Railway Company, The Atchison, Topeka & Santa Fe Railway Company, The Missouri Pacific Railway Company, Union Pacific Railroad Company, Wabash Railroad Company,

In Chancery.

*vs.*

THE INTERSTATE COMMERCE COMMISSION.

*Bill of complaint.*

William D. McHugh, Samuel A. Lynde, solicitors for complainants. William D. McHugh, Samuel A. Lynde, of counsel.

In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

*To the honorable the judges of the Circuit Court of the United States within and for the Northern District of Illinois, Eastern Division, in chancery sitting:*

Humbly complaining, your orators, Chicago, Burlington & Quincy Railroad Company, The Chicago, Rock Island & Pacific Railway Company, Chicago & Northwestern Railway Company, Chicago, Milwaukee & St. Paul Railway Company, the Atchison, Topeka & Santa Fe Railway Company, Missouri Pacific Railway Company, Union Pacific Railroad Company, and Wabash Railroad Company, show unto your honors:

1. That the Chicago, Burlington & Quincy Railroad Company is a corporation organized and existing under and by virtue of the laws of the State of Illinois; that the Chicago, Rock Island & Pacific Railway Company is a corporation organized and existing under and by virtue of the laws of the States of Illinois and Iowa; that the Chicago & Northwestern Railway Company is a corporation organized and existing under and by virtue of the laws of the States of Illinois, Wisconsin, and Michigan; that the Chicago, Milwaukee & St. Paul Railway Company is a corporation organized and existing

5 under and by virtue of the laws of the State of Wisconsin; that the Atchison, Topeka & Santa Fe Railway Company is a corporation organized and existing under and by virtue of the laws of the State of Kansas; that the Missouri Pacific Railway Company is a corporation organized and existing under and by virtue of the laws of the States of Missouri, Kansas, and Nebraska; that the Union Pacific Railroad Company is a corporation organized and existing under and by virtue of the laws of the State of Utah; that the Wabash Railroad Company is a corporation organized and existing under and by virtue of the laws of the States of Ohio, Michigan, Illinois, Indiana, and Missouri, consolidated under the laws of the State of Ohio; and that the Interstate Commerce Commission, which is hereinafter made defendant hereto, has been created and established and during all the times herein mentioned has existed under and by virtue of an act of Congress of the United States entitled "An act to regulate commerce," approved February 4, 1887, and the acts amendatory thereof and supplemental thereto.

Your orators further aver that your orators, Chicago, Burlington & Quincy Railroad Company, the Chicago, Rock Island & Pacific Railway Company, Chicago & Northwestern Railway Company, Chicago, Milwaukee & St. Paul Railway Company, and the Atchison, Topeka & Santa Fe Railway Company, have their principal operating offices in the city of Chicago, in the Northern District of Illinois and in the Eastern Division thereof.



2. Your orators further aver that your orators, Chicago, Burlington & Quincy Railroad Company, the Chicago, Rock Island & Pacific Railway Company, Chicago & Northwestern Railway Company, Chicago, Milwaukee & St. Paul Railway Company, and the Atchison, Topeka & Santa Fe Railway Company, are common carriers engaged in the transportation of property by railroad by continuous carriage or shipment from the city of Chicago, aforesaid, as the eastern terminus of their respective lines of railway. That the lines of your orator Chicago, Burlington & Quincy Railroad Company extend from said city of Chicago to the cities of Kansas City, St. Joseph, and Omaha, upon the Missouri River, and to the city of Denver in the State of Colorado; that the lines of your orator the Chicago, Rock Island & Pacific Railway Company extend from the city of Chicago to the cities of Kansas City, St. Joseph, and Omaha, upon the Missouri River, and to the city of Denver, aforesaid, also reaching other Colorado common points; that the lines of your orator Chicago & Northwestern Railway Company extend from the city of Chicago to the cities of Omaha and Sioux City upon the Missouri River, and from the city of Omaha across the State of Nebraska in a northwesterly direction to and into the Black Hills district in the State of South Dakota, but do not extend to or reach the city of Denver, aforesaid; that the lines of your orator Chicago, Milwaukee & St. Paul Railway Company extend from the city of Chicago, aforesaid, to the cities of Kansas City, Omaha, and Sioux City, on the Missouri River, and do not reach to or extend to the said city of Denver; that the lines of your orator the Atchison, Topeka & Santa Fe Railway Company extend from the city of Chicago, aforesaid, to the cities of Kansas City and St. Joseph, upon the Missouri River, and westward of the Missouri River to the city of Denver and other Colorado common points; that your orator the Missouri Pacific Railway Company is a common carrier engaged in the transportation of property by railroad by continuous carriage or shipment from the city of St. Louis in the State of Missouri, as its eastern terminus, to the cities of Kansas City, St. Joseph, and Omaha on the Missouri River, and that its lines also extend to the city of Pueblo, but do not reach Denver directly; that your orator Union Pacific Railroad Company is a common carrier engaged in the transportation of property by railroad by continuous carriage or shipment, having its eastern termini at the cities of Omaha and Kansas City, on the Missouri River, and extending west of the Missouri River, reaching the said city of Denver with a line extending through the city of Cheyenne to the city of Ogden in the State of Utah; that your orator Wabash Railroad Company is a common carrier engaged in the transportation of property by railroad by continuous carriage or shipment from the cities of Chicago and St. Louis and certain points east thereof to the cities of Omaha, St. Joseph, and Kansas City, on the Missouri River, where its lines terminate, and that they do not reach and extend to the city of Denver, aforesaid.

3. Your orators further aver that the cities of Kansas City, St. Joseph, Omaha, and Sioux City are located upon the Missouri River and are hereinafter referred to as the Missouri River cities.

8 That the city of St. Louis in the State of Missouri is located upon the Mississippi River and that various railroad companies own and operate various lines of railroad extending from cities upon the Atlantic coast, as, New York, Boston, Philadelphia, and Baltimore, to the said city of St. Louis; and that various railroad companies, among whom are certain of your orators, own and operate lines of railroad extending from the said city of St. Louis westward and northwestward to said Missouri River cities, or some of them.

That none of the lines of said railroad companies which extend from the said cities upon the Atlantic coast to the said city of St. Louis extend west of the said city of St. Louis; and that none of the lines of railroad which have been constructed and are being operated west of the city of St. Louis and west of the Mississippi River extend east of said city of St. Louis to the said Atlantic seaboard or into the territory adjacent to said Atlantic seaboard, so that said city of St. Louis is the point where lines of railway which extend to said city from the Atlantic seaboard meet the lines of railway which extend west from said city of St. Louis to said Missouri River cities and beyond said Missouri River cities to and into the territory west thereof.

Your orators further aver that various railroad companies have lines of railroad extending from cities on the Atlantic coast and in the territory adjacent thereto westwardly to the city of Chicago, many of which companies do not have lines of railroad extending to the said city of St. Louis; and that various railroad companies have lines of railroad extending from the said city of Chicago westward to the Mississippi River and beyond the Mississippi River to said Missouri River cities, or some of them.

9 That none of the lines of the railroad companies which reach from said Atlantic coast cities, and territory adjacent thereto, to the city of Chicago extend west of the said city of Chicago, and that none of the lines of railroad which have been constructed and are being operated west of the said city of Chicago, as aforesaid, extend east of the said city of Chicago to the said cities upon the Atlantic seaboard or to territory adjacent thereto, so that in effect the said city of Chicago is the point where lines of railroad from the Atlantic seaboard cities and Atlantic seaboard territory meet lines of railroad running westward from Chicago to the Mississippi and Missouri rivers and the cities thereof.

Your orators further aver that in addition to the lines of your orators as above stated reaching the said Missouri River cities there are other railroad companies, having lines of railroad extending from Chicago or St. Louis to said Missouri River cities or some of them, namely: The lines of the Illinois Central Railroad Company extend from Chicago to Sioux City and Omaha, and there terminate; the

lines of the Chicago & Alton Railroad Company extend from Chicago to Kansas City, and there terminate; the lines of the Chicago, Great Western Railway Company extend to Omaha, St. Joseph, and Kansas City, and there terminate; and the lines of the Missouri, Kansas & Texas Railway Company extend from St. Louis to Kansas City, and thence run south, and do not extend to Denver.

10 That four of your orators, the Chicago, Burlington & Quincy Railroad Company, the Chicago, Rock Island & Pacific Railway Company, the Missouri Pacific Railroad Company, and the Atchison, Topeka & Santa Fe Railroad Company, have lines of railroad extending from Chicago or St. Louis across the Missouri River to the city of Denver or other Colorado common points, but that all other lines of railroad running west from Chicago or St. Louis terminate at the Missouri River.

4. Your orators further aver that the rates for the transportation of merchandise from the cities on the Atlantic seaboard to the Mississippi River have been fixed and are made and established by the lines of railroad which extend, as aforesaid, from said Atlantic seaboard cities, or territory adjacent thereto, continuously to the said city of St. Louis, though such rates are also largely affected by the competition of water carriers, both via the Great Lakes and via the Mississippi and Ohio rivers; that in order to meet the said rates so made by the lines of railroad extending to said city of St. Louis from the Atlantic seaboard, and to share in the transportation of merchandise from the said Atlantic seaboard to the said cities upon the Missouri River and beyond, the said railroad companies whose lines extend to the city of Chicago from said Atlantic seaboard are compelled to base their rates upon the rates so made by the lines extending to said city of St. Louis, and the said railroad companies whose lines extend west from the city of Chicago, together with the said railroad companies whose lines extend from the said Atlantic seaboard to the said city of Chicago, are compelled to and do necessarily equalize the rates from the Atlantic seaboard to the

11 Mississippi River by establishing as the rates for the transportation of merchandise from said Atlantic seaboard to the various cities on the Mississippi River at which the said lines extending west of the city of Chicago cross the Mississippi River, from the city of Dubuque, Iowa, on the north, to the city of St. Louis on the south, the same rates on all merchandise going to the Missouri River and beyond as are made and fixed for the transportation of such merchandise from said Atlantic seaboard to the city of St. Louis, as aforesaid.

Your orators further aver that in addition to the fact that the said rates so made for the transportation of merchandise from the Atlantic seaboard, and territory adjacent thereto, to said city of St. Louis by lines of railway that reach directly said city of St. Louis from said seaboard territory necessarily control and govern the rates made for the transportation of merchandise from the said Atlantic seaboard through other Mississippi River crossings north

of said city of St. Louis, the further fact that there are now in force two classifications of freight, upon which classifications the tariff rates for the transportation of merchandise are based, one known as the Official Classification, which is effective from the Atlantic coast to the city of St. Louis, because of the fact above set forth that lines of railroad extend directly from the said Atlantic coast to said city of St. Louis, the other known as the Western Classification, which is in force and effect west of the city of St. Louis and in all territory west of the Mississippi River, which said two classifications differ in many respects, and differ in that certain kinds of merchandise are in the one classification placed in one class, while in the other

12 classification the same kinds of merchandise are placed in another class, also compels the companies whose rails extend from the Atlantic coast to the city of Chicago, aforesaid, and your orators whose rails extend westward from the city of Chicago and westward from the city of St. Louis, in order to equalize the rates for the transportation of merchandise from points on the Atlantic coast to and through the several Mississippi River crossings and to the said Missouri River cities and beyond, to apply the Official Classification and the St. Louis rates as far as the Mississippi River to the transportation of all such merchandise transported from the Atlantic coast and destined to the said Missouri River cities and beyond.

That the said Mississippi River crossings hereinabove referred to north of St. Louis are the following: The city of Dubuque, where the tracks of the Chicago Great Western Railway Company and the receivers now operating the railroad of said company, and where the tracks of the Illinois Central Railroad Company cross the Mississippi River; the city of Clinton, in the State of Iowa, where the tracks of the Chicago & North-Western Railway Company cross the Mississippi River; the city of Savanna, Illinois, where the tracks of the Chicago, Milwaukee & St. Paul Railway Company cross the Mississippi River; the cities of Rock Island and Davenport, where tracks of the Chicago, Rock Island & Pacific Railway Company, the Chicago, Burlington & Quincy Railroad Company, and the Chicago, Milwaukee & St. Paul Railway Company cross the Mississippi River; the cities of Burlington, Iowa, and Hannibal, Missouri, where tracks

13 of the Chicago, Burlington & Quincy Railroad Company also cross the Mississippi River; the city of Fort Madison, Iowa, where the tracks of the Atchison, Topeka & Santa Fe Railway Company cross the Mississippi River; and the city of Hannibal, where the tracks of the Wabash Railroad Company also cross the Mississippi River; and that upon all transportation of merchandise between the city of St. Louis and any of the other said Mississippi River crossings and the said Missouri River cities and into territory beyond the Missouri River, the said Western Classification applies and the rates for the transportation of merchandise are fixed with reference to the said Western Classification.

That, therefore, the rate situation up to and beyond the said Mississippi River on traffic originating at the Atlantic seaboard

and in territory east of the Mississippi River destined to the Missouri River cities or to and into territory beyond the Missouri River is in substance that the rates made and fixed by the lines of railroad reaching St. Louis directly from the Atlantic seaboard, which have been themselves largely affected by water competition, control and fix the rates on such traffic passing through the said Mississippi River crossings to the Missouri River cities and points beyond, and that the Official Classification governs and controls on all such traffic up to the Mississippi River from St. Louis to Dubuque, and the Western Classification governs and controls on all such traffic from said Mississippi River crossings to said Missouri River cities and points beyond and west of the said Missouri River.

That the rates for the transportation of merchandise from the Atlantic seaboard, aforesaid, to the Mississippi River have  
14 been and are applied, therefore, regardless of through which one of the Mississippi River crossings such shipments shall pass and regardless of whether such shipments should be destined to said Missouri River cities or beyond said Missouri River cities to the said city of Denver; and that the rates fixed for the transportation of merchandise between the said Mississippi River and the said Missouri River by your orators whose lines extend between said rivers and by all other carriers owning and operating lines of railroad between said rivers, from St. Louis on the south to Dubuque on the north, have been fixed and established on such traffic so as to equalize the rates for the transportation thereof from the Mississippi River to said Missouri River cities and so as to apply upon all traffic originating east of the Mississippi river and without regard to whether the shipments of such merchandise originated at the Atlantic seaboard or west thereof.

5. Your orators further aver that the said Mississippi River and Missouri River are now and have always been basing points in the making of rates on traffic originating east thereof and destined to or beyond said rivers, respectively, that is to say, that the rates on merchandise moving from the Atlantic seaboard cities or territory to said Missouri River cities are based upon and made up of the rates up to the Mississippi River crossings which, as has been above stated, are fixed by the rates to St. Louis, and the rates from the Mississippi River to the Missouri River, and that the rates on merchandise moving from the Atlantic seaboard cities and territory to said city of

15 Denver are based on and made up of the combination of rates up to the Mississippi River crossings with the rates between the said rivers and with the rates applying beyond the said Missouri River cities to Denver; and that the same is true and has always been true as to shipments originating in all territory east of the Mississippi River, and especially at the cities of Chicago and St. Louis.

That the making of the Mississippi and Missouri rivers as basing points in the making of rates for transportation of merchandise from territory east of the Mississippi River destined to territory between



said rivers, or to the Missouri River cities and west thereof, has been due both to natural physical conditions and to the natural development of railroad construction and operation to and beyond said rivers and in territory between the same, and has naturally resulted in the evolution and development of railroad transportation and the business and commerce in and through western territory, and has been especially caused by the following:

(a) The fact that the lines of railroad from seaboard territory extended at the farthest point to St. Louis on the Mississippi River and there terminated, and that other and independent lines of railroad have been constructed and are operated from the said city of St. Louis westward to and beyond said Missouri River, and that a similar condition exists as to the railroads to and beyond Chicago, has in large measure contributed to cause the practice and system of making separate rates for the transportation of merchandise to the Mississippi River and separate rates for the transportation of such merchandise from the Mississippi River to the Missouri River and beyond.

16 (b) The fact that commercial and competitive conditions have compelled the railroads crossing the Mississippi River at crossings north of St. Louis to maintain equal and similar rates to and from the upper Mississippi River crossings on such traffic, and that similar competitive and commercial conditions have compelled the several railroads reaching the said Missouri River cities to maintain equal and similar rates on all said traffic originating east of the Mississippi River to said several Missouri River cities.

(c) The fact that long before any railroad was constructed westward across the said Missouri River into territory beyond or to the city of Denver various lines of railroad had been constructed to the various Missouri River cities from the east and terminated there, and that other and independent lines of railroad had been constructed from said Missouri River cities westward, so that for many years the only railroads serving the said Missouri River cities were lines of railroad entering the said cities from the east and terminating there, and lines of railroad beginning at said cities and extending west therefrom, and that the said lines of railroad which were constructed from said Missouri River cities westwardly were independent and separate from the lines of railroad which reached the said Missouri River cities from the east. And your orators aver the fact to be that when the said several lines of railroad were constructed to the said Missouri River cities from the east with their termini at said Missouri River cities, they established their separate tariffs of charges for the transportation of merchandise to said cities where their said lines terminated, regardless of whether the said merchandise was to be delivered to the said cities or to be shipped

17 beyond said cities; and that the other lines of railroad which began at said Missouri River cities and extended westward therefrom established and maintained their separate tariffs for the transportation of merchandise from said cities westward, regardless

of whether the shipment of said merchandise originated at said Missouri River cities or east thereof.

(d) The fact that before lines of railroad were constructed to the said city of St. Louis and to the said Missouri River cities all of the said cities were recognized distributing points and all had established trade relations as such distributing points and were able to compete on a basis of equality with each other in the distribution and sale of their goods and merchandise.

(e) The fact, too, that both the Mississippi River and the Missouri River are large navigable streams and that the cities located upon them have the advantage of water competition in the transportation of merchandise, which is particularly true of the Mississippi River, though the Missouri River, while not at the present time offering active competition with the carriers by rail, has nevertheless heretofore been largely used prior to the construction of railroads in said territory in such transportation and its existence and its possibilities are potential in maintaining low rates along its banks.

Your orators further aver that long prior to the construction of any railroad westward across the Missouri River to the city of Denver the said Missouri River had been made a basing point in the making of rates to territory west of said Missouri River, and that, as is

above stated, for many years the only railroads serving the  
18 said Missouri River cities were lines of railroad entering said cities from the east and terminating there, and lines of railroad beginning at said cities and extending west therefrom, and that at the time the said four lines of railroad of your orators, the Chicago, Burlington & Quincy Railroad Company, the Chicago, Rock Island & Pacific Railway Company, the Missouri Pacific Railway Company, and the Atchinson, Topeka & Santa Fe Railway Company, were constructed west of and across the said Missouri River to the city of Denver, or other Colorado common points, the said Missouri River cities and the commercial interests therein had become extensive and important and the competition with the railroads whose lines terminated at said Missouri River cities had become so active and the competition between the several distributing points on said Missouri River and east thereof had become so extensive and important that the said four companies whose lines were extended across said river and westward therefrom were compelled by reason of commercial and competitive conditions to recognize, adopt, and apply at said Missouri River cities the said system of basing rates on the Missouri River which had always theretofore obtained as hereinabove set forth.

And your orators aver that under this system of making rates into and through said territory whereby the eastern railroads have made their independent rates into the city of St. Louis, which have controlled the rates of other lines to other Mississippi River crossings, and the western railroads have made their independent rates out of the city of St. Louis to the Missouri River cities, and by reason of the fact that this same system of rates has also obtained at said

19 Missouri River cities whereby the eastern railroads have made their independent rates into said Missouri River cities and the western railroads their independent rates out of said Missouri River cities, the merchants at the city of St. Louis and at the said Missouri River cities could ship in goods from the east and reship them to points of consumption in the west at the same freight charge which was paid by persons who shipped a like amount of similar merchandise direct from said eastern cities to the said points of consumption. Whereby the said merchants in the city of St. Louis and the said Missouri River cities could and did compete on the basis of equality with merchants in the east and all goods shipped from eastern territory aforesaid for consumption in the west; and that the same condition substantially has existed and now exists at the city of Chicago.

That by reason of this system of making rates whereby the said merchants at the Missouri River and the Mississippi River and Chicago could compete, as aforesaid, upon the basis of equality with merchants in the east, or with goods purchased from said eastern merchants, large and extensive commercial establishments have grown up at very large cost and expense in the said Missouri River cities and in the cities of St. Louis and Chicago, and very large sums of money have been invested in business establishments in said cities and very many commercial enterprises have been located at said cities, and, in short, the commerce of the entire central west has been built up upon and adjusted itself to the said system of rates so made upon the Mississippi River and the Missouri River, respectively, as basing

20 points. And your orators further aver that this condition with respect to the making of rates on basing points is not confined solely to western territory or to traffic moving to and beyond the Mississippi River or to and beyond the Missouri River, but prevails very largely throughout the entire country, and that the interior commerce of the country has grown up and adapted itself to this system of rate making; but that it is particularly true of the said central western territory that, in view of the fact that this system of rates has obtained in said territory ever since the railroads serving the same were constructed and operated, all of the business of the said territory has been adjusted to and is now dependent upon the said system of rates and all of the extensive mercantile establishments located in said territory are dependent upon the said system for their continued prosperity and development.

And your orators further aver that if the said system of rate making shall be abolished and the rates for shipment through the said city of St. Louis and through the said city of Chicago and through the said Missouri River cities shall be made lower than the sum of the rates in and out of the said cities, all of the merchants at said cities will be put at a disadvantage in relation to their competition in eastern territory, aforesaid, and with respect to merchandise shipped from eastern territory, aforesaid, to points of distribution and consumption in the west; and that such a change in the system of rate making in the territory aforesaid will be revolutionary and will dis-



turb all commercial conditions in and through said territory and overturn the basis upon which the commerce and business of said territory have been conducted during all the years since said railroads were constructed and operated.

6. Your orators further aver that on or about the 14th day of December, A. D. 1906, a complaint was filed in the office of the Interstate Commerce Commission at Washington, D. C., by George J. Kindel, a copy of which complaint is hereto attached marked "Exhibit A," which your orators pray may be taken as a part hereof. That thereafter by leave granted the said complainant George J. Kindel filed in said proceeding amendments to his said complaint, a copy of which is hereto attached marked "Exhibit B," which your orators pray may be taken as a part hereof; that thereafter in due time answers were filed thereto and hearings were had upon said pleadings and thereupon the said Interstate Commerce Commission rendered its opinion and entered its final order in the premises on the 2nd day of March, 1909. Your orators annex hereto a copy of the opinion rendered in said proceeding on said last named date marked "Exhibit C," which they pray may be taken as a part hereof.

Your orators further aver that the said order so entered by the said defendant the Interstate Commerce Commission in said cause on said date was in the words and figures as follows, to wit:

"This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission being of the opinion that the present class rates applied by various of the above-named defendants to the transportation of traffic from Chicago, Ill., and St. Louis, Mo., to Denver, Colo.,

as set forth in paragraphs 2 and 4 hereof, are unjust and unreasonable, and that class rates for the transportation of such traffic between said points, as set forth in paragraphs 3 and 5 hereof, are just and reasonable, and having made and filed a report containing its conclusions thereon, which said report is hereby referred to and made a part of this order:

"It is ordered, that defendants, Chicago, Burlington & Quincy Railroad Company; Chicago, Rock Island & Pacific Railway Company; Chicago & North-Western Railway Company; Chicago, Milwaukee & St. Paul Railway Company; Atchison, Topeka & Santa Fe Railway Company; Missouri Pacific Railway Company; Union Pacific Railroad Company, and Wabash Railroad Company, be, and they are hereby, required to cease and desist, on or before the 1st day of May, 1909, and for a period of not less than two years thereafter abstain, from exacting for the transportation of traffic from Chicago, Ill., to Denver, Colo., their present class rates in cents per 100 pounds, as follows:

Class-----	1	2	3	4	5	A	B	C	D	E
Rate-----	205	165	125	97	77	92	72	62	53½	46

"It is further ordered, that said defendants are hereby notified and required to establish, on or before the 1st day of May, 1909, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of traffic from Chicago, Ill., to Denver, Colo., class rates in cents per 100 pounds not exceeding the following:

Class-----	1	2	3	4	5	A	B	C	D	E
Rate-----	180	145	110	85	67	80½	63	54	47	40

"It is further ordered, that said defendants be, and they are hereby, required to cease and desist, on or before the 1st day of May, 1909, and for a period of not less than two years thereafter abstain, from exacting for the transportation of traffic from St. Louis, Mo., to Denver, Colo., their present class rates in cents per 100 pounds as follows:

23 Class-----	1	2	3	4	5	A	B	C	D	E
Rate-----	185	145	115	92	72	84½	64½	57	48½	41

"It is further ordered, that said defendants are hereby notified and required to establish, on or before the 1st day of May, 1909, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of traffic from St. Louis, Mo., to Denver, Colo., class rates in cents per 100 pounds not exceeding the following:

Class-----	1	2	3	4	5	A	B	C	D	E
Rate-----	162	127	101	80½	63	74	56	50	42	36

"And it is further ordered, that said defendants be, and they are hereby, authorized to make effective upon three days' notice to the public and to the Interstate Commerce Commission, given in the manner required by law, the various rates which said defendants are by this order required to establish and put in force on or before the 1st day of May, 1909, in which event tariffs in which such rates are shown must contain the notation that they are issued under the authority hereby granted, and must refer to the number of this case."

Your orators further aver that thereafter by order duly entered by said Interstate Commerce Commission the time for the compliance by your orators, defendants before the said Interstate Commerce Commission, with the said order of March 2nd, 1909, was duly and regularly extended until the 1st day of June, 1909.

7. Your orators further aver and allege the fact to be that said order above set forth so entered by said Interstate Commerce Commission is unreasonable, unjust, oppressive, and unlawful, in excess of the powers conferred on said defendant by said act to regulate commerce, and in violation of the Constitution of the United States, and more particularly in violation of the fifth amendment thereof, in that, among other things, the said order prevents your orators from charging their reasonable and just rates and charges for the services rendered in the transportation of merchandise from the Atlantic seaboard and territory adjacent thereto and from the cities of Chicago and St. Louis to the city of Denver, that

24 States, and more particularly in violation of the fifth amendment thereof, in that, among other things, the said order prevents your orators from charging their reasonable and just rates and charges for the services rendered in the transportation of merchandise from the Atlantic seaboard and territory adjacent thereto and from the cities of Chicago and St. Louis to the city of Denver, that

said order takes the property of your orators without due process of law, and that the said order compels your orators to accept for the transportation of property as aforesaid, rates and charges which are unreasonably low and do not furnish reasonable and fair return to your orators for the services rendered by them in such transportation. And your orators show unto your honors the following reasons why said order so entered by said Interstate Commerce Commission is unreasonable, unjust, unlawful, and in excess of the powers conferred on said commission, namely:

1. That said order was entered by said commission without regard to the real issues which were presented by the said complaint and to the evidence offered therein before the said commission. That while it is true that the said complaint as amended (Exhibit B to this bill of complaint) did allege that the class rates to the city of Denver from Chicago, St. Louis, and the Missouri River cities were unreasonable and excessive, no evidence was offered by the complainant to sustain his said complaint, except certain comparisons of rates per ton per mile to other points with the said rates to Denver, but without any evidence being offered by him or any claim being made by

him that conditions with respect to the rates sought to be used  
 25 by him for such comparisons were similar so as to permit the use of such comparisons. That the real complaint insisted upon by the said complainant and by the Denver Board of Trade and Chamber of Commerce, intervenor in said proceeding, was against the rates to and from Denver to points in Utah, as, Salt Lake City and Utah common points, as compared with the rates to and from the Missouri River cities to Salt Lake City and Utah common points, and that the rates from said Missouri River cities and from Chicago and St. Louis and eastern territory to Salt Lake City and other Utah common points were not made by a combination of the rates in and out of Denver, due to the fact, as was conclusively shown in said proceeding, that such rates to Salt Lake City and Utah common points were controlled by water competition, on the one hand, from the Atlantic seaboard to the Pacific coast, and by the lower basis of rates to Montana and Idaho through St. Paul and Minneapolis caused by water competition via the Great Lakes.

2. That the said order was made by said commission for the express purpose of destroying the Missouri River as a basing point in the making of rates from Chicago, St. Louis, and eastern territory to territory west of the Missouri River, including said city of Denver, and your orators aver and charge the fact to be that the said commission in making said order did so for the express purpose of making a general readjustment of rates for transportation of merchandise to and into central and western territory and for the express purpose of destroying the system upon which all transportation rates have heretofore been made to and into said territory,

26 namely, the system of basing such rates on the Mississippi River and on the Missouri River as basing points, and for the purpose of substituting in place of the system which has heretofore

prevailed and upon which all business and commercial interests in said territory have grown up and are now established a system of making through rates regardless of basing lines and lower than the rates to and from basing points.

And your orators further aver and charge the fact to be that this intent and purpose on the part of the commission is not only expressed in the said opinion of the commission, but is shown conclusively by the fact that while the commission in their said opinion state that the class rates from the Missouri River to Denver are unreasonable and excessive, and while a reduction of the class rates between the Missouri River and Denver would have operated to reduce the rates for the transportation of merchandise from the Atlantic seaboard, Chicago, and St. Louis, to Denver, in view of the fact that such rates have been and are now made on the Missouri River as a basing point, yet the commission expressly decline to make an order reducing said class rates for the reason that such an order would have retained the present adjustment and relation of rates between Chicago, St. Louis, the Missouri River cities, and Denver, and for the reason that it was the express intention of the commission to make a new adjustment and relationship of rates to and into said territory, and in effect to destroy the system which has heretofore prevailed of making rates on the Missouri River as a basing point, and to substitute therefor a system of making through rates

27 lower than the combination of rates on the heretofore existing basing points.

And your orators further aver that the system of rates now prevailing in said territory, whereby such rates are made on basing points, is lawful and that under said system of making rates to and into said territory all present business conditions have grown up and are established, and that the said present system of making such rates has developed in the natural evolution of business and commercial conditions in said territory and has been designed to preserve the interests of the commercial centers in said territory and to equalize conditions between them as far as practicable, and that the said Interstate Commerce Commission has no power to upset and destroy said system of making rates and to attempt to force upon the carriers and upon the communities served by them a different system of making rates for the purpose of compelling a new adjustment of rates and establishing a new commercial relation between said communities.

3. That the said order is unreasonably and unjustly discriminatory against the said Missouri River cities and in favor of Chicago and St. Louis and territory east thereof. That the purpose of the said order is to destroy the said Missouri River cities as basing points, while it leaves St. Louis a basing point on all traffic passing through St. Louis destined to Denver and leaves Chicago substantially in the same position as St. Louis, the effect of which is to give to Chicago an advantage over said Missouri River cities of 25 cents per hundred first class, and relatively corresponding advantage on the other

28 classes on all shipments of merchandise originating at the Atlantic seaboard and passing through Chicago destined to Denver, and to St. Louis an advantage over said Missouri River cities of 23 cents per hundred first class, and relatively corresponding advantage on the other classes.

4. That the said order is unreasonable in that the present class rates from Chicago, St. Louis, and the Missouri River cities, respectively, to Denver are reasonable and just in and of themselves, and that the reduction in class rates from Chicago to St. Louis sought to be made by said order is unreasonable and unjust, and that the said rates so sought to be put in effect by said order will not give to the carriers a fair and reasonable return for the services rendered by them in the transportation of goods and merchandise from Chicago and St. Louis and east thereof to Denver.

That the conditions both with respect to the construction and operation of the railroads extending from the Missouri River to Denver and with respect to the nature and character of the traffic and the extent thereof differ radically from the conditions existing east of the Missouri River, and that a much higher basis of rates should be in effect in the territory west of the Missouri River than prevails in territory east thereof. And your orators aver and charge the fact to be that their present rates are reasonably low for the transportation of goods and merchandise from the Missouri River to Denver and from Chicago and St. Louis, respectively, to Denver; that the State of Colorado is a sparsely populated State and its population is very small as compared with the territory of eastern

29 States and as compared with the population of the States east of the Missouri River; that the said State of Colorado is not a manufacturing State, but its principal occupation is mining and agriculture, and that the products thereof are low grade in character; that the territory for several hundred miles east of the city of Denver is very sparsely settled and largely unproductive and yields to the railroads traversing the same very little freight or revenue; that the cost of operating the lines of railroad in and through the State of Colorado is very much greater than in and through the territory east of the Missouri River, and the cost of construction and maintenance of their lines of railroad in Colorado is very much greater; and that considering the difference in conditions existing in said territory west of the Missouri River through which the lines of railroad that extend to Denver have been constructed and are being operated, both with respect to the density of the traffic and the nature and character thereof, and with respect to the cost of construction, maintenance, and operation of said lines of railroad, the present rates and charges now made by your orators for the transportation of merchandise and goods into said territory and to the city of Denver from Chicago and St. Louis and territory east thereof are reasonable and do not afford to the carriers anything more than a fair return for the services rendered by them, and the reduction in

the said rates from Chicago and St. Louis, respectively, so prescribed by said order is unreasonable and the rates so prescribed by said order will not afford to your orators a fair and just return for the services rendered by them in the transportation of goods and merchandise from Chicago and St. Louis to Denver, and  
 30 deny to your orators a reasonable return for the services performed; and thereby your orators will, if said order goes into effect, be deprived of their property without due process of law in violation of the fifth amendment to the Constitution of the United States.

8. Your orators further aver that the said western territory affected by the said rates, namely, the territory between the cities of Chicago and St. Louis and the city of Denver, is very largely an agricultural community receiving its supplies of goods from distributing centers, and that the change in commercial conditions and the methods of doing business which have so long obtained, as aforesaid, in said territory, which will be compelled by the enforcement of the said order, will be disastrous to the distributing centers of the Missouri River aforesaid, and your orators aver that the said order was made and entered without due or proper consideration of the effect of the said order upon the said cities, as above set forth.

That the said system of rates now in effect in said territory, and which has obtained therein since the construction of the railroads in and through said territory, is a system which offers equal opportunity to all of the said commercial centers and to merchants of all of said commercial centers in competing for the business at points of consumption in the West. And the same gives no undue preference or advantage to any person or locality, and that the said system is not in violation of the act to regulate commerce or of any act amendatory thereof or supplemental thereto, or of any other provision of the law;

but that the same is a valid, legal, and proper system of rate  
 31 making to be applied in said territory, and that it is beyond the power, authority, or jurisdiction of the said defendant, the Interstate Commerce Commission, to change or overturn the same; and any attempt on the part of the said Interstate Commerce Commission to change or overturn the said system is illegal and void. And your orators further aver and charge the fact to be, as has been already above stated, that the said order of the said commission will have the effect, and was entered for the purpose, of destroying said system of rate making in said territory and that the same is, therefore, illegal and void and beyond the power of the said commission, and that if enforced said order will take away the property of your orators without due process of law, in violation of the fifth amendment to the Constitution of the United States.

Your orators further aver that in the transfer of merchandise from the city of Chicago and the city of St. Louis to the city of Denver, such merchandise can be carried through on the same line only on four



roads as above stated; but that upon all other railroads serving the cities of Chicago, St. Louis, and Denver there is involved a transfer from one railroad to another of all the merchandise shipped from the city of Chicago or the city of St. Louis to the city of Denver; that in part the said transfer is made in cars which go through from Chicago or St. Louis to the city of Denver; that in part the transfer is made at the Missouri River cities from the cars of the eastern railroads to the cars of the western railroads; that whatever difference of

expense there may be in the transportation of merchandise  
 32 from St. Louis or Chicago through to Denver and the transportation of a like amount of similar merchandise from the city of Chicago or St. Louis to the Missouri River cities and the reshipment thereof to the city of Denver, it is very small and very much less than the difference which will be made between the rates for the said service, respectively, if the said order of the said commission is given effect. In other words, your orators aver that although the said opinion of the said commission purports to assign as its reason why the through rates should be lower than the combination on basing points the fact that no transfer is required in case of through shipments, while a transfer is presumably required on shipments moving on a combination of rates to and from basing points, such reason does not apply to the several roads which terminate at the Missouri River cities, as aforesaid, and, moreover, the transfer charge is very much less than the amount of the reduction attempted to be made by said order, and said order is unreasonable and unwarranted even on the assumption stated in the said opinion in that regard.

9. Your orators further show that the reduction in the rates now charged and received by your orators which will be compelled and enforced by said order if the same is put into effect will reduce the revenues of your orators more than dollars annually; and that the application of the principle which is contained in said order and upon which it is in fact based, will necessarily result in the further lowering of other rates now duly received by your orators to a very much greater extent. That if said order is put into  
 33 effect it will compel many other changes in rates throughout the West, and if the principle upon which it is based is generally applied, it will compel an entire readjustment of all of the rates throughout the western portion of the United States and will very seriously disturb and interfere with all business and commercial conditions in said western territory.

Your orators further aver that if the said order of the said Interstate Commerce Commission is allowed to become effective the reduction in the revenues of your orators will be thereby compelled as aforesaid and your orators will lose annually more than the sum of dollars, which said loss will be absolute and irrevocable; and that the enforcement of said order would result in great disturb-

ance in the business of your orators, and of each of them, and in a consequent irreparable loss to your orators and each of them.

10. Your orators further allege that if the said order of the said Interstate Commerce Commission is allowed to become and be effective very many suits for penalties will be brought against each one of your orators in various of the judicial districts of the United States, and very many suits will be brought against each of your orators by many persons interested in said order and its enforcement and claiming to be injured by the acts of your orators unless said order is obeyed, which said suits will be brought and prosecuted, as aforesaid, by very many persons in many of the judicial districts of the United

States against each of your orators; whereby your orators and  
 34 each of them will be subject to a great multiplicity of suits and great loss and damage will be inflicted upon your orators and each of them, all of which acts and doings will greatly injure and embarrass your orators and each of them in the transaction of their business.

Your orators further allege that, notwithstanding the facts aforesaid, the said Interstate Commerce Commission maintains and intends to maintain and will, unless the same is enjoined or suspended by the order of this honorable court, maintain the said order as an effective order; and will institute or suffer to be instituted the judicial proceedings aforesaid, which acts and doings are contrary to equity and good conscience and tend to the manifest wrong and injury of your orators.

In tender consideration whereof, and forasmuch as your orators are remediless in the premises at and by the strict rules of the common law and are only relievable in a court of equity where matters of this nature are properly cognizable and relievable, and to the end that the said Interstate Commerce Commission may be made a party defendant hereto and required to answer this bill of complaint, but not under oath, the oath of said defendant being hereby expressly waived, your orators pray that upon the filing of this bill a temporary or interlocutory order be entered herein suspending the said order of the said Interstate Commerce Commission and restraining the enforcement of the said order of the said commission and restraining the said commission from taking any steps

35 or instituting any proceedings to enforce the said order, and that upon the final hearing of this cause a decree be entered herein setting aside and annulling the said order of the said Interstate Commerce Commission and perpetually enjoining the said defendant and its members, their agents, servants, and representatives from enforcing said order and from taking any steps or instituting any proceedings for the enforcement of the said order.

Your orators further aver that if any delay intervenes between the filing of this bill and the issuance of a temporary or interlocutory order as prayed for herein, an order be issued herein suspending the said order of the said Interstate Commerce Commission and enjoin-



ing the enforcement thereof until the hearing and final determination of the application for the temporary or interlocutory order prayed for herein.

And your orators further pray that such other and further relief be granted in the premises as justice and equity may require and as to your honors may seem meet.

And your orators further pray that your honors grant unto your orators a writ of subpoena of the United States of America directed to the said Interstate Commerce Commission commanding it at a certain day, and under a certain penalty therein to be specified, personally to be and appear before your honors in this honorable court, and then and there full, true, and complete answer make to all and singular the premises, but not under oath (an answer under oath being hereby expressly waived) and to stand to and abide

36 by such order and decree herein as to your honors shall seem meet and agreeable to equity and good conscience.

And your orators will ever pray, etc.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,  
THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY,  
CHICAGO & NORTH-WESTERN RAILWAY COMPANY,  
CHICAGO, MILWAUKEE & ST. PAUL RAILWAY COMPANY,  
THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY,  
THE MISSOURI PACIFIC RAILWAY COMPANY,  
UNION PACIFIC RAILROAD COMPANY,  
WABASH RAILROAD COMPANY,

By WILLIAM D. McHUGH and

SAMUEL A. LYNDE,

*Solicitors for said Complainants.*

WILLIAM D. McHUGH and

SAMUEL A. LYNDE,

*Of Counsel.*

37 STATE OF ILLINOIS,

*County of Cook, ss:*

George H. Crosby, being first duly sworn, on oath deposes and says that he is the freight traffic manager of the Chicago, Burlington & Quincy Railroad Company, one of the complainants herein; that he has read the said bill of complaint and knows the contents thereof and that the allegations thereof are true.

GEORGE H. CROSBY.

Subscribed and sworn to before me, a notary public in and for the county of Cook and State of Illinois, this 18 day of May, A. D. 1909.

[SEAL.]

W. J. COLEMAN,  
*Notary Public.*

Before the Interstate Commerce Commission.

GEORGE J. KINDEL

*vs.*

NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY;  
New York Central & Hudson River Railroad Company;  
Baltimore & Ohio Railroad Company; Pennsylvania  
Railroad Company; Pennsylvania Company; Pittsburg,  
Cincinnati, Chicago & St. Louis Railway Company; Lake  
Shore & Michigan Southern Railway Company; Michi-  
gan Central Railroad Company; Erie Railroad Com-  
pany; Chicago, Burlington & Quincy Railroad Com-  
pany; Chicago, Rock Island & Pacific Railway Company;  
Chicago & Northwestern Railway Company; Chicago,  
Milwaukee & St. Paul Railway Company; Atchison, To-  
peka & Santa Fe Railway Company; Denver & Rio  
Grande Railroad Company; Rio Grande Western Rail-  
way Company; Southern Pacific Company; Missouri Pa-  
cific Railway Company; Union Pacific Railroad Com-  
pany; and Wabash Railroad Company.

The petition of the above-named complainant respectfully shows:

I. That complainant is engaged in the manufacture and sale of spring beds, brass and iron beds, comforters, mattresses, and bedding, having his principal place of business in the city of Denver, State of Colorado, in shipping material used in such manufacture into Denver, and in shipping the above-mentioned articles out of Denver to points in various States of the United States, and that complainant brings this proceeding in his own interest and on behalf of all other merchants and dealers doing business in the city of Denver.

II. That defendants are common carriers engaged in the transportation of property by continuous carriage or shipment, wholly by railroad, according as their various lines or routes may run, between Boston, Mass.; New York, N. Y.; Philadelphia, Pa.; Baltimore, Md.; Chicago, Ill.; St. Louis, Mo.; and Omaha, Nebr., to Denver, Colo., and San Francisco, Cal., and from New York, Chicago, and St. Louis to Omaha, and as such common carriers the defendants are subject to the provisions of the act to regulate commerce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto, and especially the act of June 29, 1906, entitled "An act to amend an act entitled 'An act to regulate commerce,' approved February 4, 1887, and all acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission."

III. That the short-line distances in miles, all rail, from Boston, Mass.; New York, N. Y.; Philadelphia, Pa.; Baltimore, Md.; Chicago, Ill.; St. Louis, Mo.; and Omaha, Nebr., to Denver, Colo., and San Francisco, Cal., are:

From—	To—	
	Denver.	San Francisco.
Boston.....	2,060	3,458
New York.....	1,932	3,330
Philadelphia.....	1,842	3,240
Baltimore.....	1,822	3,220
Chicago.....	1,018	2,279
St. Louis.....	916	2,199
Omaha.....	538	1,786

40 That the short-line distance from Denver to San Francisco is 1,454 miles, and from New York, Chicago, and St. Louis to Omaha is 1,405, 493, and 413 miles, respectively. That over some of the routes made by defendants in carrying the traffic mentioned herein from the east such traffic passes through Denver in going to San Francisco.

IV. That the rates charged and enforced by defendants for the transportation of the various kinds and classes of freight articles to Denver, Colo., from New York, N. Y., and points taking the same rates, Chicago, Ill., and other points taking Chicago rates, St. Louis, Mo., and other points taking Mississippi River point rates, Omaha, Neb., and other points taking Missouri River point rates, and from points taking rates adjusted to said New York, Chicago, St. Louis, and Omaha rates, are excessive, wrongfully discriminatory and unduly prejudicial to complainant and other merchants, dealers, manufacturers, and shippers at Denver as hereinafter more particularly alleged. That by way of illustration complainant herein shows by the following table the rates on various commodities from the points aforesaid to Denver and San Francisco, and from said points, except Omaha, to Omaha, reference being herein and hereby made to the tariffs of defendants on file with this commission for the rates on the classes and the commodities not herein specifically mentioned:

	From New York to—			
	Denver.		San Francisco.	
	CL.	LCL.	CL.	LCL.
Alcohol in wood.....	1.46	2.09	1.10	1.50
Bicycles.....	3.85	5.005	2.50	3.60
Books boxed.....	2.25	2.72	1.40	2.00
Boots and shoes.....		2.72		2.50
Cash registers.....		3.645		3.00
Cotton piece goods.....		1.79	1.00	1.50
Curled hair, in bales.....		3.155	1.25	1.75
Dry goods.....		2.72		3.00
Iron, angle.....	1.04	1.30	.75	1.90
Iron, structural.....	1.04	1.30	.75	1.90
Paper, news.....	.94	1.73	.75	1.10
Tubing, brass.....	1.33	2.03	1.35	1.85
Typewriters.....		3.645		3.00

	From Chicago to—			
	Denver.		San Francisco.	
	CL.	LCL.	CL.	LCL.
Alcohol in wood.....	1. 15	1. 65	1. 10	1. 50
Bicycles.....	3. 30	4. 10	2. 50	3. 60
Books boxed.....	1. 70	2. 05	1. 40	2. 00
Boots and shoes.....		2. 05		2. 50
Cash registers.....		3. 075		3. 00
Cotton piece goods.....	1. 30	1. 30	1. 00	1. 50
Curled hair, in bales.....		2. 05	1. 25	1. 75
Dry goods.....		2. 05		3. 00
Iron, angle.....	.77	.97	.75	1. 90
Iron, structural.....	.77	.97	.75	1. 90
Paper, news.....	.70	1. 25	.75	1. 10
Tubing, brass.....	.97	1. 65	1. 35	1. 85
Typewriters.....		3. 075		3. 00

42	From St. Louis to—			
	Denver.		San Francisco.	
	CL.	LCL.	CL.	LCL.
Alcohol in wood.....	1. 05	1. 45	1. 10	1. 50
Bicycles.....	3. 10	3. 70	2. 50	3. 60
Books boxed.....	1. 50	1. 85	1. 40	2. 00
Boots and shoes.....		1. 85		2. 50
Cash registers.....		2. 775		3. 00
Cotton piece goods.....	1. 15	1. 15	1. 00	1. 50
Curled hair, in bales.....		1. 85	1. 25	1. 75
Dry goods.....		1. 85		3. 00
Iron, angle.....	.72	.92	.75	1. 90
Iron, structural.....	.72	.92	.75	1. 90
Paper, news.....	.65	1. 15	.75	1. 10
Tubing, brass.....	.92	1. 45	1. 35	1. 85
Typewriters.....		2. 775		3. 00

	From Omaha to—			
	Denver.		San Francisco.	
	CL.	LCL.	CL.	LCL.
Alcohol in wood.....	.80	1. 00	1. 10	1. 50
Bicycles.....		2. 50	2. 50	3. 60
Books boxed.....	1. 25	1. 25	1. 40	2. 00
Boots and shoes.....		1. 25		2. 50
Cash registers.....		1. 875		3. 00
Cotton piece goods.....	.80	.80	1. 00	1. 50
Curled hair, in bales.....		1. 25	1. 25	1. 75
Dry goods.....		1. 25		3. 00
Iron, angle.....	.50	.65	.75	1. 90
Iron, structural.....	.50	.65	.75	1. 90
Paper, news.....	.50	.80	.75	1. 10
Tubing, brass.....	.65	1. 00	1. 35	1. 85
Typewriters.....		1. 875		3. 00

43	From New York to Omaha.		From Chicago to Omaha.	
	CL.	LCL.	CL.	LCL.
Alcohol in wood.....	.66	1.10	.35	.65
Bicycles.....		2.51		1.60
Books boxed.....		1.47		.80
Boots and shoes.....		1.47		.80
Cash registers.....		2.07		1.20
Cotton piece goods.....		.99	.50	.50
Curled hair, in bales.....		1.77		1.40
Dry goods.....		1.47		.80
Iron, angle.....	.54	.65	.27	.32
Iron, structural.....	.54	.65	.27	.32
Paper, news.....	.64	.93	.20	.45
Tubing, brass.....	.68	1.03	.65	.32
Typewriters.....		2.07		1.20

	From St. Louis to Omaha.	
	CL.	LCL.
Alcohol in wood.....	.25	.45
Bicycles.....		1.20
Books boxed.....		.60
Boots and shoes.....		.60
Cash registers.....		.90
Cotton piece goods.....		.35
Curled hair, in bales.....	.35	.90
Dry goods.....		.80
Iron, angle.....		.22
Iron, structural.....		.22
Paper, news.....		.15
Tubing, brass.....	.45	.27
Typewriters.....		.90

V. That complainant also shows and herein sets forth in the following table the rates on said articles from Omaha and Denver to Salt Lake City, Utah, and refers to defendants' tariffs on file with this commission for rates upon the freight classes and upon other commodities:

	From—			
	Omaha to Salt Lake City.		Denver to Salt Lake City.	
	CL.	LCL.	CL.	LCL.
Alcohol in wood.....	1.45	1.75	1.26	1.52
Bicycles.....		4.10		3.60
Books.....		2.05		1.80
Boots and shoes.....		2.05		1.80
Cash registers.....		3.075		2.70
Cotton piece goods.....	2.00	2.00	1.25	1.25
Curled hair, in bales.....		3.075		2.70
Dry goods.....		2.05		1.80
Iron, angle.....	.655	1.28	.41	1.08
Iron, structural.....	.655	1.28	.41	1.08
Paper, news.....	.85	1.53	.90	1.28
Tubing, brass.....	1.28	1.75	1.08	1.52
Typewriters.....		3.075		2.70

That the rates charged by such of the defendants as participate in the traffic from Denver to Salt Lake City and other points in the State of Utah are excessive and also wrongfully prejudicial to Denver when compared with the rates charged on traffic from Omaha to Salt Lake City and other points in the State of Utah.

VI. That in the transportation of freight defendants charge and collect far higher rates per ton per mile for the carriage of commodities from the points of shipment aforesaid to Denver than they charge and collect for the much shorter distance to Omaha. That in many instances the rate on raw material to Denver is higher than  
 45 the rate on the manufactured article from the same shipping territory to Denver. That defendants' rates to Denver from St. Louis, Chicago, and New York and points taking the same rates or rates adjusted thereto are in many instances higher than their rates on the same traffic from the same shipping points over routes running through or near Denver to San Francisco. That the adjustment of rates is such that on practically all articles shipped from New York, Chicago, St. Louis, and points taking like rates or rates adjusted thereto to Omaha, Kansas City, or other Missouri River point and reshipped from those points to Salt Lake City or other point west of Denver, the total transportation charge is much lower than the total charge based upon the rate from the original point of shipment to Denver and the rate from Denver to Salt Lake City or other points west of Denver.

VII. That under the aforesaid rates and practices manufacturers, merchants, and shippers at St. Louis, Chicago, Omaha, and San Francisco have and exercise a controlling and an illegal advantage over complainant and other Denver manufacturers, merchants, and shippers in the distribution throughout Colorado, Utah, Nebraska, and other States of manufactures and products the raw materials of which originate at New York and the east. That under such unjust rate adjustment complainant and other manufacturers at Denver have been unable to compete with the cities mentioned in the shipment of manufactured articles to the territory contiguous to Denver that they should naturally control. And in support hereof complainant hereby refers to the schedules of rates on the commodities mentioned herein which have been established and used by defendants  
 46 from the points mentioned to Denver, Omaha, and San Francisco, and which are on file in the office of this commission, and complainant makes said schedules a part of this petition.

VIII. That by reason of the premises defendants have been and are subjecting complainant, the merchants and shippers at Denver, and their traffic, to the payment of unjust and unreasonable rates of transportation, and have been and are subjecting complainant, such other merchants and shippers at Denver, their traffic, and the city of Denver itself, to unjust discrimination and undue and unreasonable prejudice and disadvantage, and giving undue and unreasonable preference and advantage to merchants and shippers at St. Louis, Chicago, Omaha, and San Francisco, the traffic therein and said cities themselves, in violation of the provisions of the act to regulate commerce,

as amended, and more particularly sections one, two, and three thereof; and in many cases the rates constitute greater compensation in the aggregate for the transportation of like kind of property under substantially similar circumstances and conditions for the shorter distance to Denver than for the longer distance, over the same line, in the same direction, to San Francisco, the shorter being included within the longer distance, in violation of section four of said act to regulate commerce.

Wherefore, complainant prays that the defendants be required to promptly answer the charges herein; that after due hearing and investigation an order be made requiring said defendants to wholly cease and desist from the aforesaid violations of said act to regulate commerce, as amended, and to the full extent thereof; that a

47 further order be entered fixing reasonable and just rates for the transportation aforesaid of the various kinds and classes of freight to and from Denver aforesaid, to be observed by said defendants as maximum rates for such transportation; that the commission prescribe such rules and regulations in lieu of those now existing over defendants' lines as will in the future operate to prevent the continuance of the aforesaid unreasonable exactions, unjust discriminations, or undue and unreasonable prejudice and disadvantage to complainant and other merchants and dealers in the city of Denver, and the city of Denver itself, in respect of the transportation aforesaid; and that such other and further order or orders may be entered as the commission may deem necessary in the premises and complainant's cause may appear to require.

Dated at Washington, D. C., December 14, 1906.

GEORGE J. KINDEL.

48

# EXHIBIT B.

Before the Interstate Commerce Commission.

GEORGE J. KINDEL

vs.

NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY;  
New York Central & Hudson River Railroad Company;  
Baltimore & Ohio Railroad Company; Pennsylvania  
Railroad Company; Pennsylvania Company; Pittsburg,  
Cincinnati, Chicago & St. Louis Railway Company; Lake  
Shore & Michigan Southern Railway Company; Michi-  
gan Central Railroad Company; Erie Railroad Com-  
pany; Chicago, Burlington & Quincy Railroad Company;  
Chicago, Rock Island & Pacific Railway Company; Chi-  
cago and Northwestern Railway Company; Chicago,  
Milwaukee & St. Paul Railway Company; Atchison, To-  
peka & Santa Fe Railway Company; Atchison, Topeka  
& Santa Fe Railway Company—Coast Lines; Denver &  
Rio Grande Railroad Company; Rio Grande Western  
Railway Company; Southern Pacific Company; Missouri  
Pacific Railway Company; Union Pacific Railroad Com-  
pany, and Wabash Railroad Company.



The complainant in his own behalf, and in behalf of all other merchants and dealers, doing business in the city of Denver, asks leave to amend his complaint herein by adding the following matter:

The complainant avers that the all-rail class rates to Denver from Chicago, St. Louis, and Missouri River points respectively are as follows:

From Chicago and common points to Denver. Chicago and common points, New Orleans, and Memphis:

49	1	2	3	4	5	A	B	C	D	E
	205	165	125	97	77	92	72	62	53.5	46

From St. Louis and common points to Denver. St. Louis, and Mississippi River points:

	1	2	3	4	5	A	B	C	D	E
185	145	115	92	72	84.5	64.5	57	48.5	41	

From Missouri River and common points to Denver. Missouri River points:

	1	2	3	4	5	A	B	C	D	E
125	100	80	65	50	60	45	40	35	30	

The complainant alleges that the above rates are excessive and unreasonable and should be reduced.

The complainant also alleges that the rates on the following commodities from Chicago and other points east of the Missouri River to Denver and from Denver to Utah common points, New Mexico common points, and Montana common points are excessive, and should be reduced, namely: Sewing machines, mining machinery, sole leather, shoe findings, boots and shoes, bicycles, hardware, cotton piece goods, drugs and medicines, matches, woodenware, glass (common window), bottles (common), chimneys, glass, coffee (roasted), soap, overalls, powder (blasting), stoves, fuse, and candles.

The complainant insists and alleges that the rates upon the commodities referred to in his complaint by name, from various points to Denver are excessive and unreasonable and should be reduced.

#### 50 STATE OF COLORADO,

##### *City and County of Denver.*

George J. Kindel, being first duly sworn, says that he is the complainant in the above entitled case and that he has read the foregoing amended complaint, and knows the contents thereof, and that the facts therein stated are true as he knows them, and verily believes.

Subscribed and sworn to before me this 23rd day of January, 1907.

GEORGE J. KINDEL,  
*Complainant.*



51

United States of America.

Before the Interstate Commerce Commission.

GEORGE J. KINDEL

vs.

NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY;  
 New York Central & Hudson River Railroad Company;  
 Baltimore & Ohio Railroad Company; Pennsylvania  
 Railroad Company; Pennsylvania Company; Pittsburg,  
 Cincinnati, Chicago & St. Louis Railway Company;  
 Lake Shore & Michigan Southern Railway Company;  
 Michigan Central Railroad Company; Erie Railroad  
 Company; Chicago, Burlington & Quincy Railroad Com-  
 pany; Chicago, Rock Island & Pacific Railway Company;  
 Chicago & Northwestern Railway Company; Chicago,  
 Milwaukee & St. Paul Railway Company; Atchison,  
 Topeka & Santa Fe Railway Company; Atchison,  
 Topeka & Santa Fe Railway Company—Coast Lines;  
 Denver & Rio Grande Railroad Company; Rio Grande  
 Western Railway Company; Southern Pacific Company;  
 Missouri Pacific Railway Company; Union Pacific Rail-  
 road Company, and Wabash Railroad Company.

No. 951.

*Second amendment to complaint.*

WM. B. HARRISON,

*Attorney for Complainant.*

The complainant in his own behalf, and in behalf of all other mer-  
 chants and dealers, doing business in the city of Denver, asks leave  
 to amend his complaint herein by adding the following matter:

52 The complainant avers that the all rail class rates to Denver  
 from Chicago, St. Louis, and Missouri River points, respect-  
 ively, and from Denver to Salt Lake City, are as follows:

From Chicago and common points to Denver:

1	2	3	4	5	A	B	C	D	E
205	165	125	97	77	92	72	62	53.5	46

From St. Louis and common points to Denver:

1	2	3	4	5	A	B	C	D	E
185	145	115	92	72	84.5	64.5	57	48.5	41

From Missouri River and common points to Denver:

1	2	3	4	5	A	B	C	D	E
125	100	80	65	50	60	45	40	35	30

Denver to Salt Lake City and Utah common points:

1	2	3	4	5	A	B	C	D	E
164	140	123	103	85	85	67	60	41	34

The complainant alleges that the above rates are excessive and  
 unreasonable and should be reduced.

The complainant also alleges that the rates on the following commodities from Chicago and other points east of the Missouri River to Denver and from Denver to Utah common points, New Mexico common points, and Montana common points are excessive and should be reduced, namely: Sewing machines, mining machinery, sole leather, shoe findings, boots and shoes, bicycles, hardware, cotton piece goods, drugs and medicines, matches, woodenware, glass (common window), bottles (common), chimneys, glass, coffee (roasted), soap, overalls, powder (blasting), stoves, fuse, and candles.

53 The complainant insists and alleges that the rates upon the commodities referred to in his complaint by name from various points to Denver are excessive and unreasonable and should be reduced.

GEORGE J. KINDEL,  
*Complainant.*

STATE OF COLORADO,  
*City and County of Denver.*

George J. Kindel, being first duly sworn, says that he is the complainant in the above-entitled case and that he has read the foregoing amended complaint, and knows the contents thereof, and that the facts therein stated are true, and verily believes.

GEORGE J. KINDEL.

Subscribed and sworn to before me this 19th day of February, 1907.

[L. S.]

DWIGHT L. PARKER,  
*Notary Public.*

54

EXHIBIT C.

GEORGE J. KINDEL

*vs.*

NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY  
et al.

No. 951.

Submitted August 14, 1907. Decided March 2, 1909.

*Report of the Commission.*

CLARK, *Commissioner:*

Complainant is a manufacturer of mattresses and a dealer in brass beds and similar articles in the city of Denver, Colorado. Complainant alleges that the rates charged by the defendants from New York, Chicago, St. Louis, Omaha, and points taking similar rates to Denver are excessive and discriminatory and that the rates from Denver to Salt Lake City are also excessive and preferential. An order is prayed for that will fix just and reasonable rates, rules, and regulations governing transportation between the points mentioned and that will prevent the continuance of the alleged unreasonable and undue exactions and discriminations complained of. The complaint specifically alleged that the rates from Chicago, St. Louis, and the

Missouri River to Denver were excessive, but the allegation respecting rates from Denver to Utah points was in general terms. Certain commodities were named in the complaint, but it was stated that they were referred to only by way of illustration. At the hearing complainant introduced testimony respecting many articles not specified in the complaint and stated that what he desired was to raise the general question of the rate adjustment at Denver and to obtain a  
 55 general order which would correct that situation. The commissioner who took the testimony stated at the hearing that it was doubtful if the commission could make a general order of the kind which complainant desired on a general complaint like that in question, and still more doubtful if it would undertake to do so in this particular case. Thereupon the complainant, before any testimony had been introduced by defendants, amended his complaint by filing the class rates from Chicago, St. Louis, and Omaha to Denver, and from Denver to Utah points, alleging that same were excessive and that they should be reduced. He later filed a list of commodities as to which he desires a specific order.

Witnesses were introduced by complainant who testified to particular rates and regulations which were alleged to be unreasonable, but many of such matters were not referred to in the complaint and defendants had no notice, until the testimony was introduced, that they would be subjects of investigation. Hence the matters thus complained of are not before us in such manner that any order can be entered with relation thereto, but assuming the testimony introduced as to them to be correct, it would seem that some new adjustment should be had. However, if satisfactory adjustment is not made we can deal with the question only under a complaint which properly raises those points. We are authorized to reduce a rate, or to modify a rule of practice which affects a rate, only after full hearing upon complaint, and no order can be entered by the commission affecting a carrier's rates or regulations except after such carrier has  
 been given full and fair opportunity to be heard.

56 The testimony showed that the bulk of the traffic to and from Denver moves under class rates. The general question presented, therefore, is an adjustment of the class rates from Chicago, St. Louis, and the Missouri River to Denver, and from Denver to Utah points. While complainant alleges that rates to and from Denver are excessive, and while the testimony reinforces this assertion, the grievance most insisted upon was that the present adjustment of rates favors cities upon the Missouri River, of which Kansas City is fairly illustrative, and unjustly discriminates against Denver.

The first-class rate from Chicago to Kansas City is 80 cents, and from Kansas City to Utah common points \$2.05, making a through rate, based on Kansas City, of \$2.85. From Chicago to Denver the first-class rates is \$2.05, and from Denver to Utah points \$1.64, making a through rate, based on Denver, of \$3.69, higher than the combination on Kansas City by 84 cents. The service rendered by defendants is the same in either case (except that in one instance the traffic might

be unloaded at Kansas City and in the other instance at Denver), and in the Utah territory the merchant at Denver is at a decided disadvantage as compared with his competitor at Kansas City in dealing in commodities that originate east of the Missouri River, while the manufacturer at Denver is under a like disadvantage as compared with the manufacturer at Kansas City if the raw material comes from east of the Missouri River.

This advantage held by the dealers and manufacturers at Kansas City and other Missouri River cities is due to the fact that the carriers have made the Missouri River a basing line for rate-construction purposes—that is, rates from points east of that river to points west thereof are made by adding together the rates to the river points and the rates from the river points; and to Denver and Utah points and to a great expanse of territory lying west of the Missouri River the through rates are made up from the sums of the rates to and from the Missouri River basing-line cities. The first-class rate from Chicago to the Missouri River is 80 cents, from the Missouri River to Denver it is \$1.25, and from Chicago to Denver it is the sum of these two, or \$2.05. As to Denver, therefore, the dealer in Kansas City can purchase at Chicago or other eastern points, ship to Kansas City, and reship to Denver at the same total rate that is charged the Denver dealer if he ships direct from Chicago or some other eastern point.

The Denver Chamber of Commerce intervened in this proceeding, and it insists that the proper way to eliminate the alleged discrimination against Denver is not by reducing rates to Denver, but that it should be removed by making Denver a basing line. There are certain points in Colorado which, together with Denver, are known as Colorado common points, and to which rates from the east are generally the same. The Denver Chamber of Commerce urges that these Colorado common points should be made basing points in the same way that the Missouri River is a basing line, and that the discrimination against Denver would thus be removed. We are not impressed with this view, and for several reasons. It might be that to establish the Colorado common points as a basing line would satisfy the complaint of the Denver interests and would substantially remove the disadvantage of which they complain as compared with the Missouri River crossings, but Salt Lake City and other Utah common points would then have exactly the same complaint as to Denver that Denver now has as to Kansas City.

The carriers can haul traffic from Chicago direct to Denver cheaper than they can haul it to Kansas City, permit it to be unloaded, and at some subsequent time reloaded and forwarded to Denver. The rate for a long through haul should ordinarily be less than the combination of two or more local rates that are included within that distance over the same lines. Through rates for long hauls are necessary to the development of the country and to the removal of such discriminations as Denver complains of in this instance.

We see no good reason for withholding from Denver reasonable through rates for through service. Rates made up on combination on a closely adhered to basing line must be made with regard to the cost of the terminal services, which is necessarily high. If traffic moving from Chicago to Denver is sold, resold, unloaded and reloaded at Kansas City, the Denver dealers and the consumers of that traffic must pay the profits and extra costs involved in those transactions. The combination rate must include the cost of that extra service. If, on the other hand, the traffic moves directly through from Chicago to Denver, the cost of the extra terminal service at Kansas City is saved to the carriers, and, as the cost is provided for in the rate that is applied to such through movement, the rate is too high if that cost is not incurred, except in cases in which the combination rate

59 is made up from factors which are so low in themselves as to result in a reasonably low through rate. While it is proper in fixing rates for transportation to give consideration to commercial conditions and needs, rates for services over the same lines, between the same points, but under differing conditions, must be made with some consideration for the difference in the cost of the service.

In *Burnham, Hanna, Munger Dry Goods Co. et al. v. Chicago, Rock Island & Pacific Ry. Co. et al.*, 14 I. C. C. Rep., 299, we dealt with the complaint of Kansas City and other Missouri River cities against rates from the Atlantic seaboard to the Missouri River cities made on combination on the basing line at the Mississippi River crossings.

There complainants argued that the basing line at the Mississippi River should be disregarded or abolished, but one of complainants' expert witnesses testified that he did not think similar action should be taken with relation to basing line on the Missouri River crossings. It is clear that if their prayer had been granted and like action had been taken as to the Missouri River basing line, the Missouri River cities would have been right back in the same relation of rates as before and the discrimination of which they complained would not have been relieved in any degree.

In that case we said:

"An abundant share of the prosperity and development of the trans-Mississippi and trans-Missouri territories has come to the Missouri River cities from which this complaint comes, but the fact that they have prospered in the past as a result of rapid expansion and development of new territory may not be taken as conclusive

60 evidence of the correctness or justness at this time of the rate adjustment that has prevailed in the past. We are not impressed with the view that the system of making rates on certain basing lines should be abolished. No system of rate making has been suggested as a substitute for it, except one based upon the postage stamp theory, or one based strictly upon mileage. Either of these would create revolution in transportation affairs and chaos in commercial affairs that have been builded upon the system of rate making

now in effect. It must not, however, be assumed that a basing line for rates may be established and be made an impassable barrier for through rates, or that cities or markets located at or upon such basing line have any inviolable possession of, or hold upon, the right to distribute traffic in or from the territory lying beyond. Development of natural resources, increase in population, growth of manufacturing or producing facilities, and increased traffic on railroads create changed conditions which may warrant changes in rates and in rate adjustments in order to afford just and reasonable opportunity for interchange of traffic between points of production and points of large consumption."

We there dealt with through rates that were constructed by adding together the rates from points of origin to the Mississippi River crossings and the rates from the Mississippi River crossings to the Missouri River cities, no through joint rates being in effect. In the present case some of the defendants have their own lines and their individual rates from Chicago to Denver; others of the defendants unite in joint through rates.

In the Burnham, Hanna, Munger case, *supra*, we said:

"As railroads were constructed into the undeveloped west, and for a time at least had their western termini at the east bank of  
61 the Mississippi River, it seems natural that when the river was crossed, and rates were established to points beyond, they should be constructed by adding certain sums to the rates already established to the river, and as additional lines were built and additional railroad crossings over the Mississippi River were constructed, competition between carriers and localities naturally established common rates to the Mississippi River crossings, especially when applied to traffic going beyond.

As the west was further developed this same condition and like results followed at the several crossings of the Missouri River, so that to-day the rates from the Mississippi River crossings to the Missouri River crossings, Kansas City to Omaha, inclusive, are the same, and from points east to the Missouri River cities are the same via any of the Mississippi River crossings; East St. Louis to East Dubuque, inclusive."

The Mississippi and the Missouri Rivers presented natural barriers to the construction of railroads from the East to the West. There is now no such natural inducement or justification for establishment of a basing line at the Colorado common points. Roads are constructed and in operation through the Colorado common points to all the territory lying between them and the Pacific Ocean, and there is no valid reason why the Colorado common points should be given, as to places lying west thereof, the very advantage which the Missouri River crossings now enjoy with relation to the Colorado common points and of which Denver here complains.

The present rate adjustment is, in our opinion, unjustly discriminatory against Denver and in favor of Kansas City and other Missouri River crossings. This discrimination can be removed only



62 by the establishment of some new relation of rates, and it is not within the authority or power of this commission to remove it except through a reduction in rates, which necessarily operates to reduce the revenues of the defendants.

In considering a new adjustment or relationship of rates, it is necessary and proper to take into consideration all the interests involved, as well as those of complainant and defendants herein. A new relationship or adjustment of rates affects the interests of other communities and commercial centers, and in making an adjustment to remove the discriminations found in this case action should be in harmony with the principles that have been adopted in other readjustments. Justice can not be done by prescribing an adjustment which might serve to satisfy complaint in this case if the effect of it is to impose upon some other persons or localities the burden that is lifted from the complainant herein.

In the Burnham, Hanna, Munger case, *supra*, we decided that the Missouri River cities were entitled to through rates from eastern points lower than the combination on the Mississippi River basing line. If we should now reduce the high class rates from the Missouri River crossings to Colorado common points and the higher class rates from Colorado common points to Utah common points it might temporarily benefit Denver, but unless we should also reduce the through rates from Chicago, St. Louis, etc., to Denver, which are also too high because of the high factors from which they are constructed, the relationship between Kansas City and Denver would not be changed. Kansas City would still have the same advantage that Denver now complains of, with no result except reduction in rates and in the revenues of the carriers, which is against the announced desire of the Denver Chamber of Commerce.

63 As has been seen, the present rate adjustment between the East and the West is built upon basing lines at the Mississippi River and at the Missouri River. The Ohio River crossings form a similar basing line on traffic to and from the southeast, but no other such basing lines exist between the Atlantic seaboard and the West. It is not possible to have a rate adjustment which places all towns and cities upon an exact equality. Some places possess advantages of natural location which, together with other influences, have made them commanding commercial centers in a certain territory, and consideration must be given to such advantages and development in readjusting rates in cases where development, increase in population, growth of manufacturing and production, and increased traffic on railroads, warrant changes in the rate adjustments which have obtained in the past.

In the Burnham, Hanna, Munger case, *supra*, we did not reduce the local class rates between the Mississippi and the Missouri rivers; we did order a reduction in the separately established rates applicable to through business, through joint rates from the east to the Missouri River cities not being in existence and not being prescribed, because of the fact that east of Chicago and the Mississippi River

Official Classification governs the tariffs and west of Chicago and the Mississippi River Western Classification governs. Following the principle there established, we think that here the class rates from Chicago to Denver and from St. Louis to Denver should  
 64 be less than the sums of the local rates based on the Missouri

River. Rates to points in Colorado other than Colorado common points, and, as we understand it, to many points in New Mexico and Wyoming, are based upon the Colorado common point rates, and rates are so adjusted that in distribution of traffic brought from the east the Colorado common points have the State of Colorado and some points outside thereof as practically exclusive territory.

In the Spokane case, 15 I. C. C. Rep., 376, we held that the reasonableness of a rate between two points served by two or more carriers could not be determined by consideration alone of that line which is shortest and most favorably situated as to operations, earnings, etc., but that the entire situation must be considered.

This record does not disclose the expense of building the railroads between Chicago and Denver, but in other cases estimates of cost of constructing lines in Kansas and southern Nebraska have been laid before us, and from a general knowledge of the territory and the lines serving same we are convinced that there is nothing unusual in the original cost of building or in the present cost of maintaining roads through this open territory which is generally free from heavy grades. The country lying between the Missouri River and Denver does not present difficulties in railroad building or maintenance substantially greater than are presented by the territory between the Mississippi and Missouri rivers. Generally the density of traffic is less west of the Missouri River and there are other reasons why rates may reasonably be higher in that territory.

65 The first-class rate from New York City to Chicago, nearly 1,000 miles, is 75 cents; from Chicago to Omaha, 500 miles, 80 cents; from the Missouri River to Denver, short line 538 miles, \$1.25; and from Denver to Ogden, 600 miles, \$1.64. The traffic manager of the Union Pacific Railroad was asked how, in view of the established scale of rates east of the Missouri River, he could justify his rates under consideration west of that river, and replied that the lower basis in force in the east was due to greater density of traffic and greater earnings.

We found in the Spokane case, with reference to the Great Northern and Northern Pacific railways, that the traffic and earnings of those transcontinental lines compare favorably with the strongest lines in the east. It may be instructive to state these facts with respect to the Union Pacific Railroad. For that purpose and for use in further considering the general reasonableness of these rates we give below two tables, the first showing gross earnings per mile, net earnings per mile, and ton-miles per mile upon all railroads of the United States, both as a whole and by the territorial groups as defined for statistical purposes, the Union Pacific being principally in groups



seven and eight, and the second showing these same facts with respect to the different lines, including the Union Pacific, reaching Denver from the east.

66

YEAR ENDED JUNE 30, 1906.

	Gross earnings per mile of road.	Income from operation per mile of road.	Number of tons carried 1 mile per mile of road.
Group I.....	\$15,528.00	\$4,579.00	743,634
Group II.....	22,517.00	7,641.00	2,443,924
Group III.....	13,789.00	4,058.00	1,713,615
Group IV.....	8,216.00	3,002.00	879,506
Group V.....	7,350.00	1,981.00	640,485
Group VI.....	8,690.00	3,136.00	811,977
Group VII.....	9,108.00	4,184.00	767,530
Group VIII.....	6,885.00	2,325.00	506,392
Group IX.....	5,848.00	1,533.00	421,150
Group X.....	9,532.00	4,166.00	572,574
United States, average.....	10,460.00	3,548.00	982,401

YEAR ENDED JUNE 30, 1907.

Atchison, Topeka & Santa Fe Ry.....	\$11,092.64	\$4,266.50	821,068
Chicago, Burlington & Quincy R. R.....	9,218.28	2,653.70	802,722
Chicago, Rock Island & Pacific Ry.....	7,964.58	2,433.95	549,965
Missouri Pacific Ry.....	6,620.41	1,909.80	569,930
Union Pacific R. R.....	15,144.12	6,547.99	1,146,918

The last table is for the year 1907, the first for the year 1906. The figures for 1907 somewhat exceed those for 1906, and for purposes of comparison we state here corresponding figures as to the Union Pacific for the year 1906.

In that year the ton-miles were 1,081,431, showing a density of traffic considerably in excess of the average for the whole  
67 United States and materially in excess of every territorial group except Group II and Group III. The gross earnings from operation were \$13,465 per mile, exceeding by more than 25 per cent the average for the entire United States, substantially equaling Group III, and exceeded only by Groups I and II. Its net earnings from operation were \$5,962 per mile, exceeding by 75 per cent the average of the entire United States, and materially exceeding those for every group except Group II.

The Union Pacific Railroad Company, according to its operating report of June 30, 1907, embraces 1,901 miles of main track and 1,092 miles of branch lines, making a total of 2,993 miles. Its bonded indebtedness is \$100,000,000, at 4 per cent, being about \$33,000 per mile. Its common stock outstanding is \$195,000,000, its preferred stock \$100,000,000, making a total of \$295,000,000, or \$98,000 per mile. The report states that these stocks have been issued for the purpose of purchasing other stocks and that the amounts mean nothing when given in miles of road.

During the year covered by this report the road earned from operation \$15,000 per mile, and its net income from operation was \$6,547 per mile, or a total of \$19,678,798. After deducting interest on \$100,000,000 of funded debt and taxes, there would still remain from operation over \$14,000,000, or 14 per cent upon \$100,000,000 of capital stock. These sums, \$200,000,000, would equal about \$70,000 per mile for the system, and without doubt more than represent the fair value of the property upon the basis of cost of construction or of cost of reproduction.

68 As already suggested, we can not in determining a competitive rate select that railroad which is the shortest or the most advantageously situated and limit the rate to what would allow that property fair earnings. We must consider this entire situation and determine a reasonable rate not merely with reference to the Union Pacific, but with reference to all lines serving these Colorado common points via reasonably direct lines.

Four different railway systems other than the Union Pacific reach Colorado common points from the Missouri River, namely, the Burlington, the Rock Island, the Santa Fe, and the Missouri Pacific. These defendants were asked to give the commission some idea of the density of traffic upon their lines between the Missouri River and Denver. Their statistics are kept in such a manner that they were unable to furnish us the exact information desired, but they have given certain statistics which perhaps answer the same general purpose. Below is a table showing the total tons of freight from the Missouri River and points east to Colorado common points for the years 1899 to 1906, inclusive. It will be seen that the total tonnage is not large, but that there has been a substantial increase from 1899 to 1906. The apparent decrease from the years 1901, 1902, and 1903 was accounted for by traffic officials by the fact that certain construction work under way in Colorado during those years required the transportation of an unusual quantity of materials. The increase in Colorado business has not been as marked as in the general business of the transcontinental lines.

69 *Westbound tonnage into Colorado from Missouri River and east thereof, in tons.*

1899	281, 379	1903	438, 025
1900	351, 871	1904	364, 637
1901	454, 732	1905	364, 145
1902	505, 923	1906	436, 453

We were also furnished with statements showing the number of trains operated over various lines between Denver and the Missouri River, and one system was able to give us its tonnage and earnings by States. From all of this it fairly appears that the density of traffic on these lines from the Missouri River to Denver, except the Union Pacific upon the north and the Santa Fe upon the south, is not heavy, and that this is particularly true of the last two or three hundred miles before reaching Colorado common points. The earnings upon this portion of the various systems are comparatively small. This is not however, conclusive upon the reasonableness of rates now

in effect. These lines must be considered in the nature of branch lines. The profit from this business does not accrue upon the 200 or 300 miles of railroad where it is the major part of the traffic, but upon the haul up to the Missouri River, where it is in the nature of surplus traffic.

In the Burnham, Hanna, Munger case, supra, we found that the defendant carriers had for years maintained a line of proportional class rates between Chicago and the Twin Cities, applicable on traffic from the Atlantic seaboard, one-third less than their local class rates between Chicago and the Twin Cities, and that their local rates had not thereby or therefore been pulled down or reduced. We can not accept the theory that if in this case the through rates from Chicago and St. Louis to Denver are reduced, like reductions in the local rates from Chicago or St. Louis to the Missouri River or from the Missouri River to Denver must automatically follow. If rates applicable only to through business and that are materially lower than the local rates can be maintained between Chicago and St. Paul, and in the many other instances which could be cited where the carriers adopt and maintain the same principle, without forcing reductions in the local rates, it is obvious that the same thing can be done between Chicago and the Missouri River or between Chicago and Denver. As has been seen, the class rates from the Missouri River to Denver, short line distance 538 miles, are on a scale of \$1.25 per 100 pounds, first class, and from Denver to Utah common points, about 650 miles, they are on a scale of \$1.64 per 100 pounds, first class. Measured by any test these rates are in both instances unreasonable and excessive. It seems obvious that they must be revised, either by voluntary action of the carriers in conformity with the principles announced in the Spokane case, supra, or in some other proceeding before this commission. For that reason no reduction of those rates will be ordered in this case, although upon the record we are convinced that they are unwarrantably high, and that reasonable reduction therein would not work any undue reduction in the revenues of defendants. If those rates are reduced so that the combination on the Missouri River or on Denver results in reasonable through rates it does not necessarily follow that these through rates must again be reduced. Certainly it is better in every instance where important readjustment of rates is necessary to have it worked out by the carriers or with their cooperation, if that be possible.

The present class rates from Chicago to the Missouri River are, in cents per 100 pounds, as follows:

Class -----	1	2	3	4	5	A	B	C	D	E
Rate -----	80	65	45	32	27	32	27	22	18½	16

The present class rates from Chicago to Denver are, in cents per 100 pounds, as follows:

Class -----	1	2	3	4	5	A	B	C	D	E
Rate -----	205	165	125	97	77	92	72	62	53½	46

being made up of the sums of the class rates from Chicago to the

Missouri River crossings, as above, and the class rates from the Missouri River to Denver, as follows:

Class -----	1	2	3	4	5	A	B	C	D	E
Rate -----	125	100	80	65	50	60	45	40	35	30

The present class rates from St. Louis to Denver are, in cents per 100 pounds, as follows:

Class -----	1	2	3	4	5	A	B	C	D	E
Rate -----	185	145	115	92	72	84½	64½	57	48½	41

being made up of the class rates from St. Louis to the Missouri River, in cents per 100 pounds, as follows:

Class -----	1	2	3	4	5	A	B	C	D	E
Rate -----	60	45	35	27	22	24½	19½	17	13½	11

and the above named class rates from the Missouri River to Denver.

As hereinbefore stated, we find that this rate adjustment is unjustly discriminatory in favor of the Missouri River cities and against Denver. The through class rates from Chicago to Denver

and from St. Louis to Denver are unreasonably high in and of themselves. The reduction of those rates as herein ordered will not involve any unreasonable or undue reduction of the revenues of the defendants affected thereby, and for these reasons and upon the whole record we are of the opinion that for the future reasonable class rates from Chicago to Denver should not exceed, in cents per 100 pounds, the following:

Class -----	1	2	3	4	5	A	B	C	D	E
Rate -----	180	145	110	85	67	80½	63	54	47	40

and that reasonable class rates from St. Louis to Denver should not exceed, in cents per 100 pounds, the following:

Class -----	1	2	3	4	5	A	B	C	D	E
Rate -----	162	127	101	80½	63	74	56	50	42	36

No reparation will be awarded under these findings.

An order will be entered in accordance with these views.

(Endorsed:) Filed May 18, 1909. H. S. Stoddard, clerk.

73 And on the same day to wit, on the eighteenth day of May,

1909, a certain chancery subpoena issued out of the clerk's office of said court directed to the marshal of the District of Columbia to execute. Which said subpoena, together with the memorandum there-to attached and the marshal's return thereon endorsed, is in the words and figures following, to wit:

74 UNITED STATES OF AMERICA,

*Northern District of Illinois, Eastern Division, ss:*

*The United States of America to Interstate Commerce Commission, greeting:*

We command you and every of you that you appear before our judges of our Circuit Court of the United States of America for the Northern District of Illinois at Chicago, in the Eastern Division of said district, on the first Monday in the month of July next, to answer the bill of complaint of Chicago, Burlington & Quincy Railroad

Company, the Chicago, Rock Island & Pacific Railway Company, Chicago & Northwestern Railway Company, Chicago, Milwaukee & St. Paul Railway Company, the Atchison, Topeka & Santa Fe Railway Company, Missouri Pacific Railway Company, Union Pacific Railroad Company, and Wabash Railroad Company, this day filed in the clerk's office of said court, in said city of Chicago, then and there to receive and abide by such judgment and decree as shall then or thereafter be made, upon pain of judgment being pronounced against you by default.

To the marshal of the District of Columbia to execute.

Witness, the Hon. Melville W. Fuller, Chief Justice of the United States of America, at Chicago, aforesaid, this eighteenth day of May, in the year of our Lord one thousand nine hundred and nine and of our independence the 133rd year.

[SEAL]

H. S. STODDARD, *Clerk*,

By JOHN H. R. JAMAR, *Chief Deputy*.

MEMORANDUM.

The above-named defendant is notified that unless it shall enter its appearance in the clerk's office of said court, at Chicago, aforesaid, on or before the day to which this writ is returnable, the complainant's bill will be taken against it as confessed and a decree entered accordingly.

H. S. STODDARD, *Clerk*,

By JOHN H. R. JAMAR, *Chief Deputy*.

76 Served copy of within writ on Interstate Commerce Commission by service on Edward Moseley, personally, May 21, 1909.

AULICK PALMER, *Marshal*.

(Endorsed:) Filed May 24, 1909. H. S. Stoddard, clerk.

77 And afterwards to wit: On the twenty-first day of May, 1909, there was filed in the clerk's office of said court in said entitled cause a certain certificate of the Attorney-General, which said certificate is in the words and figures following to wit:

78 In the Circuit Court of the United States for the Northern District of Illinois.

THE CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,  
The Chicago, Rock Island & Pacific Railway Company,  
Chicago & Northwestern Railway Company, Chicago,  
Milwaukee & St. Paul Railway Company, The Atchison,  
Topeka & Santa Fe Railway Company, Missouri Pacific  
Railway Company, Union Pacific Railroad Company,  
and The Wabash Railroad Company.

*vs.*

THE INTERSTATE COMMERCE COMMISSION.

To the clerk of said court:

I hereby certify that the above-entitled cause now pending in said court is a suit in equity brought by the Chicago, Burlington &

Quincy Railroad Company, Chicago, Rock Island & Pacific Railway Company, Chicago & Northwestern Railway Company, Chicago, Milwaukee & St. Paul Railway Company, the Atchison, Topeka & Santa Fe Railway Company, Missouri Pacific Railway Company, Union Pacific Railroad Company, and the Wabash Railroad Company against the Interstate Commerce Commission, under the act of Congress entitled "An act to regulate commerce," approved February 4, 1887, as amended, and that said suit is, in my opinion, a case of general public interest.

I therefore request that, complying with the provisions of the act of Congress entitled "An act to expedite the hearing and determination of suits in equity pending or hereafter brought under the act of February 4, 1887, entitled 'An act to regulate commerce,'" approved February 11, 1903, you will file this certificate among the records of the above-entitled cause, and immediately furnish a copy thereof to each of the circuit judges of the Seventh Circuit, to the end that said case shall be given precedence over those cases in said court, and be assigned for hearing at the earliest practicable date before not less than three of the circuit judges of said circuit, as is provided by the said act of February 11, 1903.

GEO. W. WICKERSHAM,  
*Attorney-General.*

WASHINGTON, D. C., *May 19, 1909.*

(Endorsed:) Filed May 21, 1909. H. S. Stoddard, clerk.

80 (A certified copy of the certificate of the Attorney-General filed in said cause on the twenty-first day of May, 1909, was duly delivered to the four United States circuit judges for the Seventh Judicial Circuit.)

81 And afterwards, to wit, on the fourteenth day of June, 1909, come the defendant, by its solicitors, and file in the clerk's office of said court in said cause a certain demurrer in words and figures following, to wit:

82 In the Circuit Court of the United States for the Northern District of Illinois, Eastern Division.

CHICAGO, BURLINGTON & QUINCY RAILROAD Company, the Chicago, Rock Island & Pacific Railway Company, Chicago & North Western Railway Company, Chicago, Milwaukee & St. Paul Railway Company, the Atchison, Topeka & Santa Fe Railway Company, the Missouri Pacific Railway Company, Union Pacific Railroad Company, Wabash Railroad Company

In Equity. No. 29472.

v.

INTERSTATE COMMERCE COMMISSION.



*Demurrer of Interstate Commerce Commission.*

*To the honorable the judges of the Circuit Court of the United States for the Northern District of Illinois, Eastern Division:*

The Interstate Commerce Commission, the defendant in the above-entitled suit, by protestation, not confessing or acknowledging  
 83 any of the matters and things in the bill of complaint of the above-named complainants contained to be true in such manner and form as the same are therein set forth and alleged, demurs to the said bill. And for cause of demurrer shows—

## I.

That it appears from the face of the said bill that all the proceedings required by the statute to be taken were duly taken and had; that after a formal complaint and answer a full hearing was had; and that the commission arrived at its conclusion after being fully advised; that the order complained of was duly given, made, rendered, and served; and that the conclusion of said commission was not arbitrary or reached through fraud; and, therefore, the act of the said commission is final and conclusive, and not reviewable by the courts.

## II.

That said bill does not set forth any fact or circumstance showing fraud or arbitrary action on the part of the commission, and if it be claimed that the act of the commission was in any way irregular or arbitrary the same is not set forth in the said bill of complaint.

## III.

That it does not appear from the said bill how or wherein the rates prescribed by said order as mentioned in said bill are, or that either or any of said class rates is, or was, or will be, an unreasonably low rate.

84

## IV.

That said bill fails to state any fact or facts from which the court can determine from the face of said bill that the rates are unreasonably low or confiscatory. Said bill does not set out the cost of transportation or traffic between the points affected by said order, or the gross receipts of complainants, or the gross expenses, or the net profits or loss as the case may be, or the cost of the carriage of traffic from St. Louis and Chicago to Denver, or any other fact or circumstance which, if true, would show that the rates fixed by the defendant herein were unreasonably low or confiscatory.

## V.

That said bill does not state any facts well pleaded, that the rates complained of are confiscatory or would produce a loss to the com-

plainants, but simply states that the rates complained of are unreasonably low and unremunerative, without stating the amount of profit, if any, said rates would produce, or what percentage of profit complainants consider to be a reasonable profit, and without stating in what degree, if any, or in what manner the rates fixed by the defendant are below the cost of the service.

## VI.

That the bill is indefinite, vague, uncertain, and ambiguous in that it states merely the conclusions of the pleader and does not allege any definite, ultimate facts from which the court can determine  
85 whether the rates fixed by the commission in its order complained of are unremunerative or in violation of the constitutional rights of the complainants.

## VII.

That it does not appear from the face of the bill that complainants have exhausted their remedies under the act to regulate commerce, as it is not shown that complainants have petitioned the Interstate Commerce Commission for a rehearing as provided in section 16a of the act to regulate commerce as amended June 29, 1906.

## VIII.

That it does not appear from the face of the bill and its annexed exhibits that the commission's order has deprived complainants of any rights under the statutes or Constitution of the United States.

## IX.

Wherefore, and for divers other good causes of demurrer appearing in said bill, this defendant demurs thereto, and humbly demands judgment of this court whether it shall be compelled to make any other or further answer to said amended bill, and prays to be hence dismissed, with its reasonable costs in this behalf sustained.

INTERSTATE COMMERCE COMMISSION,  
By EDWARD A. MOSELEY,  
*Secretary thereof, thereunto duly authorized.*

86 I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

LUTHER M. WALTER,  
*Solicitor for Defendant.*

WASHINGTON, DISTRICT OF COLUMBIA, 88:

Edward A. Moseley, being first duly sworn, says on oath that he is the secretary of the Interstate Commerce Commission, the defendant

in the above-entitled suit, and that the foregoing demurrer is not interposed for delay.

EDW. A. MOSELEY.

Subscribed and sworn to before me, H. S. Milstead, a notary public in and for the said District of Columbia, this 11th day of June, 1909.

[SEAL.]

H. S. MILSTEAD,  
Notary Public.

(Endorsed:) Filed Jun. 14, 1909. H. S. Stoddard, clerk.

87 And afterwards, to wit, on the twenty-second day of June, 1908, there was filed in the clerk's office of said court in said cause a certain affidavit in words and figures following, to wit:

88 In the Circuit Court of the United States within and for the Northern District of Illinois, eastern division.

CHICAGO, BURLINGTON & QUINCY RAILROAD COM-	}
pany et al., complainants,	
vs.	
INTERSTATE COMMERCE COMMISSION, DEFENDANT.	}

*Affidavit of Marvin Hughitt.*

STATE OF ILLINOIS,  
County of Cook, ss:

Marvin Hughitt, being first duly sworn according to law, on oath deposes and says that he has been actively engaged in the operation of railroads for many years last past; that for 21 years he has been president of the Chicago & North-Western Railway Company, and that he is familiar with the establishment and development, in general, of the railroads of the west, and also with the commercial development of the western cities.

Affiant further says that railroads have been built to the city of Chicago and to the city of St. Louis from the east and there terminate; that other and independent railroads have been built from the cities of Chicago and St. Louis westward; that lines of railroad have been built to the cities of St. Paul, Omaha, Kansas City, Memphis, and New Orleans from the east and there terminate; that other and independent railroad systems have been built, beginning at the cities of St. Paul, Omaha, Kansas City, Memphis, and New Orleans,  
89 respectively, and extending thence westward; that lines of railroad have been constructed to the city of Denver from the east and there terminate and that other and independent lines of railroad have been constructed from the city of Denver westwardly therefrom.

Affiant further says that each of the said independent systems of railroad established its own tariff of charges for transportation over its line; that by reason of the fact that railroad systems have con-

tinuous lines of railroad from the Atlantic seaboard to the city of St. Louis, and the fact that said companies made the rates for the transportation of merchandise over said lines to the city of St. Louis from said Atlantic seaboard, and by reason of the further fact that the classification known as the Official Classification obtained upon shipments of all merchandise from the Atlantic seaboard to the city of St. Louis, the railroad companies whose lines reach from the Atlantic seaboard to the city of Chicago and the railroad companies whose lines extend from the city of Chicago to the Missouri River were compelled to apply through junctions with eastern lines at Chicago and Peoria and common junctions, to the Mississippi River, like rates to those applying from the seaboard to St. Louis; and to apply between the Mississippi River and the Missouri River rates and classifications similar to those applying between the city of St. Louis and the Missouri River.

Affiant further says that the said railroad companies charge for the transportation of merchandise over their lines the rates fixed by said companies as aforesaid, excepting only in those cases wherein, by reason of competitive conditions, they were compelled to establish or join other roads in establishing different rates to meet rates fixed by other roads and routes.

Affiant further says that the cities of Chicago, St. Louis, St. Paul, Omaha, Kansas City, and Denver were established trade centers before the railroads were constructed to or from said cities; and  
 90 that each of said cities by virtue of its natural situation and facilities, had been established as a distributing center long prior to the time of the construction of the railroads to or from the same. And affiant says that the fact that said cities were established trade centers and distributing points was the main determining factor which influenced the construction of the railroads to and from said cities.

Affiant further says that by reason of the fact that lines of railroad were built into said cities from the east and there terminated, and that independent lines of railroad were built from said cities westward, and the fact that each line of railroad established its separate tariff for the transportation of merchandise over its rails, the merchants at said cities were enabled to ship merchandise into said cities from the east, and reship the same to points of consumption in almost all territory in the west (excepting transcontinental territory) at the same freight charge which was imposed when goods were shipped from the east through said cities to said westward points of consumption. As a consequence of this fact, the said merchants at said cities have equal opportunity in competition in the distribution of merchandise with the merchants in the east, and with the merchants to the west of said cities, so far as their business is affected by freight rates.

Affiant further says that by reason of the natural situation of the said cities, and by reason of the natural advantages of said cities, and by reason of the general development of the west, the said cities

have grown and the business thereof has expanded. And affiant further says that the growth and development of the said cities and of the business thereof has been stimulated by reason of the rate situation aforesaid, and by reason of the equal opportunities which the said rate situation affords the merchants at said cities in competing with the merchants in the east and in the west. And affiant further says that the fact that under the said system of rates merchants at said cities enjoyed the said equality of opportunity in competition with the merchants of the east and west, was a potent factor in the way of inducing the location in said cities of many mercantile

91 enterprises, and the investment of large sums of money in said cities in the establishment and development of mercantile establishments. And affiant further says that the commercial interests of the said cities have been dependent upon and intimately related to the said system of rates and the said equality of opportunity in competition afforded thereby, and that all of the business of the said cities has for very many years been adjusted to the said rate system.

Affiant further says that in the economic development of the west the establishment and development of the said cities as distributing centers has been an important if not an essential factor; that the distributing centers in the west by enabling the merchants in smaller cities to quickly receive supplies, allows the country merchant to do a larger business upon a smaller capital, and enables him to keep his supplies fresh and also enables him more promptly to furnish needed supplies to his customers.

Affiant further says that if the said system of rate making by which, as aforesaid, the merchants at said cities are enabled to receive, handle, and ship out to the west merchandise at the same freight charge imposed upon a shipment through said cities to the west should be abolished, and instead thereof there should be established the principle that through rates should be less than the sum of the local rates, the change would vitally affect all of the said cities and the business thereof greatly to their injury. If such change were made merchants in the east could ship goods to the point of consumption in the west through the said cities at a lower freight charge than would be imposed upon the merchants at cities in receiving, handling, and shipping to the same point of consumption in the west a like amount of merchandise. If such change were made, the merchants at said cities would no longer have the equality of opportunity in competition with the merchants in the east or west. If such change were made, the merchants at said cities would be at

92 a serious disadvantage in the distribution of merchandise in the west, as compared with their competitors in the east or their competitors in the west; since their said competitors would be enabled to deliver merchandise to the western point of consumption at a less freight charge than that imposed upon said merchants. And affiant says that there is no valid reason why the railroads extending westward from the cities of Chicago and St. Louis would be com-

pelled to carry merchandise between the Mississippi and Missouri rivers or west thereof at a lower rate when the said shipments originate at the Atlantic seaboard than is charged when similar shipments to similar points originate at Chicago or St. Louis.

And affiant further says that no valid reason exists why the railroads which extend from the Missouri River to the city of Denver should be compelled to transport merchandise between said Missouri River and the city of Denver at a less rate when the shipments originate in the city of Chicago or the city of St. Louis than that charged for the transportation of similar merchandise when such shipments originate at cities upon the Missouri River.

Affiant further says that the system of rates now obtaining, whereby, as aforesaid, rates "break" at the Mississippi River and at the Missouri River, has obtained practically since railroads were constructed between said rivers; that the relation of rates involved in the said system whereby the rates for shipments from the Atlantic seaboard to the Missouri River were made up of the rate from the Atlantic seaboard to the Mississippi River and the rate from the Mississippi River to the Missouri River, and whereby the rate from the cities of Chicago and St. Louis to the city of Denver was the same as the rate from the cities of Chicago and St. Louis to cities upon the Missouri River and the rate from the said Missouri River cities to the city of Denver has obtained continuously for practically a quarter of a century. And affiant further says that the said system of rates and the said relation of rates which has so long obtained

93 would be completely overthrown if the principle should be established that the rate for the through haul should be less than the sum of the rates for the two shorter hauls; and affiant says that the equality of opportunity in competition heretofore enjoyed as aforesaid by merchants in said cities will be greatly impaired as above set forth, and their competitors given an advantage over them as above set forth, if the said change should be made. And affiant says that the commercial conditions of the entire central west which, as aforesaid, are based upon and necessarily intimately related to the rate system always heretofore existing, will be revolutionized if the said change is made, and the effect of such change would be destructive and far-reaching in its evil results.

Affiant further says that, up to the present time, the distribution of merchandise and supplies has been a large and probably a predominant factor in the business and commerce of the cities located upon the Missouri River, and that these conditions seem likely to continue for at least a considerable period in the future; that if the said rate system which has long obtained is overthrown and the change aforementioned is forced upon the railroads, the result will be necessarily disastrous to the commercial interests of all said cities in the distribution of merchandise and supplies, since, as above set forth, those engaged in said business at said cities will be put at a disadvantage with respect to their competitors in the east and in the west. And thus the change will seriously injure the most important commercial interest of the said cities.



Affiant further says that by reason of the fact that under the system of rates whereby the charge for the long haul through all intermediate points is less than the sum of the charges for the shorter hauls to and from any intermediate point, the merchants at all intermediate points are, as aforesaid, denied equality of opportunity in competition with the merchants at either end of the line of railroad in the distribution of merchandise; and affiant says that the necessary result of such a system of rate making is to centralize the business of the distribution of merchandise at the ends of the line of railroad.

94 Affiant further says that the system of rate making which has obtained in the west, as above set forth, whereby rates break on merchandise from the east at the Mississippi River, at the Missouri River, and at Denver and other points, has constantly been applied to the shipments from the west of the western products; that the rates on grain from points west of the Missouri River to New York are made up of the rates from point of origin to the Missouri River, plus the rates from the Missouri River to the Mississippi River, plus the rates from the Mississippi River to the city of New York, or the local rates from the point of origin to the Missouri River, plus the rate from the Missouri River to Chicago, plus the rate from Chicago to New York.

Affiant further says that the system of rate making whereby the rates on grain from the west break, as above mentioned, has been and is of great assistance to all shippers of grain in that by virtue of this system intermediate markets for said grain have been established at the Missouri River, the Mississippi River, and Chicago; that at said points mills have been constructed and the various products of the grain manufactured; that the existence of said markets is of great value to the shippers of grain, because they provide a constant demand for the grain produced and afford an opportunity for a sale at any time and in any quantity, and because they enable the surplus grain to be purchased from the producer and stored at the places wherein there will be the least freight charges involved, and also at the places from which the grain can be shipped to the points of ultimate consumption, avoiding all unnecessary railroad service, and therefore all unnecessary freight charge.

Affiant further says that if the principle of rate making whereby rates break as above set forth is abolished and the principle established that the rate on grain for the through haul to New York from the point of production must be less than the sum of the charges from the point of production to any of the markets aforesaid and the rate from such market to New York, the existence of the

95 said markets will be threatened and their development and usefulness will be very seriously impaired and the said milling and other manufacturing interests practically destroyed. Affiant further says that grain is handled in large quantities and at a very small margin of profit, and that any slight advantage in freight

charges given to one point over another will radically change the movement of the grain.

Affiant further says that with respect to the live stock produced in the west, the rates to the consuming markets are applied practically upon the same basing principle. Upon shipments of live stock from the points of origin in the west the rates are so applied that the shipper may ship his cattle to the stock yards at Forth Worth in Texas, Kansas City or St. Joseph in Missouri, or Omaha in Nebraska, or Sioux City in Iowa, and offer the live stock there for sale, and if no satisfactory price is obtained the live stock may be shipped through to the city of Chicago or the city of St. Louis at the through rate from the point of origin.

Affiant further says that on various other products of the west the rates have long been so applied as to grant to the shipper privileges in all respects similar to those which accompany the breaking of rates; that on shipments of grain the rates are so applied that at the milling points throughout the country the grain may be stopped en route at the mill, ground into flour or other product, and the product reshipped to the point of destination, all at the through rate from the point of origin to point of destination. And this, affiant says, is the practice obtaining generally throughout the territory west of the city of Chicago.

Affiant further says that the same principle operates in very many instances in respect to lumber transportation. That the same principle is applied with respect to shipments of agricultural implements and vehicles, whereby these articles may be shipped from  
96 point of manufacture to points of concentration in the west and there stored and afterward reshipped to points of ultimate destination at the through rate from point of manufacture to point of ultimate consumption.

Affiant further says that the principle inhering in the rate situation as above set forth, whereby commodities and articles may be handled en route and reshipped to destination without increase in freight charge, is of vital importance to the commerce of the western country; that this privilege as accorded to grain is essential to the operation of and maintenance of mills throughout the entire western section; as applied to lumber it is essential, where applied, to the operation of the milling industries; that as applied to agricultural implements and vehicles it permits of the storage thereof at points permitting quick delivery to consumers when needed.

Affiant further says that the system of rate making whereby rates break at the Mississippi River, the Missouri River, and at the city of Denver, as above set forth, whereby merchants at those cities are enabled to receive, handle, and reship merchandise without increase in freight charges, is in all essential respects identical with the system whereby millers and elevators are allowed to receive, handle, and reship grain and its products without increase in freight charges, and the lumber mills are allowed to receive, handle, and reship lumber and its products without increase in freight charges, and the

implement and vehicle dealers are allowed to receive, at their storage warehouses, implements and vehicles and reship from there without increase in the freight charges. And affiant says that the adoption of a principle which would require a charge for the through haul to be less than the sum of the charges for the two short hauls involved would destroy the system of rate making whereby rates break as hereinabove set forth, and would destroy the system whereby grain, live stock, implements, lumber, and other commodities can be handled as above set forth and would be destructive of large local interests, both commercial and manufacturing.

And affiant further says that this system of rate making whereby in the various methods above set forth merchants and manufacturers may stop, handle, and reship merchandise and commodities without increase of freight charges affects vitally all the important lines of business of the western country; and that a change in the system whereby these things should be forbidden would be a change which would revolutionize the methods of doing business throughout the western country, and would work injury to the west and its business, the extent of which would be so great as to be difficult of computation.

MARVIN HUGHITT.

Subscribed in my presence and sworn to before me this 12 day of June, A. D. 1909.

[SEAL.]

W. J. COLEMAN,  
Notary Public.

My commission expires Sept. 5th, 1909.

(Indorsed:) Filed Jun. 22, 1909. H. S. Stoddard, clerk.

98 And on the same day, to wit, on the twenty-second day of June, 1909, there was filed in the clerk's office of said court in said entitled cause a certain affidavit in words and figures following, to wit:

99 In the Circuit Court of the United States within and for the Northern District of Illinois, Eastern Division.

CHICAGO, BURLINGTON & QUINCY RAILROAD	}
Company et al., complainants,	
<i>vs.</i>	
INTERSTATE COMMERCE COMMISSION, DEFEND-	}
ant.	

*Affidavit of E. P. Ripley.*

100 In the Circuit Court of the United States within and for the Northern District of Illinois, Eastern Division.

CHICAGO, BURLINGTON & QUINCY RAILROAD	}
Company et al., complainants,	
<i>vs.</i>	
INTERSTATE COMMERCE COMMISSION, DEFEND-	}
ant.	

*Affidavit of E. P. Ripley.*

STATE OF ILLINOIS,

*County of Cook, ss.*

E. P. Ripley, being first duly sworn according to law, on oath deposes and says that he has been actively engaged in the operation of railroads for more than forty years last past; that for thirteen years he has been president of the Atchison, Topeka and Santa Fe Railway Company, and that he is familiar with the establishment and development, in general, of the railroads of the west, and also with the commercial development of the western cities.

Affiant further says that in the past certain railroads have been built from the east to the city of Chicago and to the city of St. Louis, terminating at the latter points; that other and independent railroads have been built from the cities of Chicago and St. Louis westward; that lines of railroad have been built to the cities of St. Paul, Omaha,

101 Kansas City, Memphis, and New Orleans from the east, terminating at the cities of St. Paul, Omaha, Kansas City, Memphis, and New Orleans, respectively, and extending thence westward; that lines of railroad have been constructed to the city of Denver from the east, and there terminate; and that other and independent lines of railroad have been constructed from the city of Denver westwardly therefrom; that the railway now owned and operated by the Atchison, Topeka and Santa Fe Railway Company was originally constructed from the cities of Atchison and Kansas City westward towards Albuquerque, New Mexico, with a branch line extending from La Junta in Colorado to the city of Denver, there terminating; and afterwards, in the year 1887, there was caused to be constructed a connecting line from Kansas City to Chicago which was afterwards acquired and operated by the Atchison, Topeka and Santa Fe Railway Company.

Affiant further says that each of said independent systems of railroad established its own tariff of charges for transportation over its own line, and that by reason of the fact that certain railroad systems have continuous lines of railroad operated from the Atlantic seaboard to the city of St. Louis, and the fact that said companies made the rates for the transportation of merchandise over said lines to the city of St. Louis from said Atlantic seaboard, and by reason of the further fact that the classification known as the Official Classification obtained on all shipments of merchandise from the Atlantic seaboard to the city of St. Louis, the railroad companies whose lines reach from the Atlantic seaboard to the city of Chicago and the railroad companies whose lines extend from the city of Chicago to the Missouri River were compelled, through competitive conditions, to apply through junctions with eastern lines at Chicago and Peoria and common junctions, to the Mississippi River, like rates to those applying from the seaboard territory to St. Louis and to apply between the Mississippi River and Missouri River, rates and classifications similar to

102 those applying between the city of St. Louis and the Missouri River.

Affiant further says that the said railroad companies charge for the transportation of merchandise over their lines the rates fixed by said companies as aforesaid, excepting only in those cases wherein, by reason of competitive conditions, they were compelled to establish or join with other roads in establishing different rates in order to meet the rates fixed by other roads and competitive routes.

Affiant further says that the cities of Chicago, St. Louis, St. Paul, Omaha, and Kansas City were established trade centers or posts before railroads were constructed to or from such cities; and that each of said cities, by virtue of its natural situation and facilities, had been established as a distributing or jobbing center or post supplying certain territory tributary thereto long prior to the time of the construction of railroads to or from the same. And affiant says that the fact that said cities were established trade centers and distributing or jobbing points was one of the important factors which influenced the construction of railroads to and from said cities.

Affiant further says that by reason of the fact that lines of railroad were built from the east into said cities and there terminated, and that independent lines of railroad were built from said cities westward, and the fact that each line of railroad established its separate tariff for the transportation of merchandise over its own rails, the merchants at said cities were enabled to ship merchandise into said cities from the east, and to reship the same to points of consumption in the west at the same freight charge which was imposed when goods were shipped from the east through said cities to said westward points of consumption. As a consequence thereof the merchants at said cities have equal opportunity in the distribution of merchandise in competition with the merchants in the east, and with the merchants to the west of said cities, so far as their business is affected by freight rates.

103 Affiant further says that by reason of the natural situation of the said cities, and by reason of the advantages obtained by said cities through competitive conditions, including competition between independent lines of railway, and by reason of the general development of the west, said cities have grown and the business thereof greatly expanded.

Affiant further says that the growth and development of said cities and of the business thereof has been stimulated by reason of the rate situation aforesaid, and by reason of the equal opportunities which the said rate situation affords the merchants at said cities in competing with the merchants in the east and in the west.

Affiant further says that the fact that under said system of rates merchants at said cities enjoyed the said equality of opportunity in competition with the merchants of the east and west, was a potent factor in the way of inducing location of merchants and many mercantile enterprises in said cities, and the investment of large sums of

money therein in the establishment and development of mercantile establishments.

Affiant further says that the commercial interests of the said cities have been dependent upon and intimately related to said system of rates and the said equality of opportunity in competition afforded thereby, and that all of the business of said cities has for very many years been adjusted to said rate system.

Affiant further says that in the economic development of the west, the establishment and development of the said cities as distributing centers has been an important event and essential factor; that the distributing centers of the west by enabling the merchants in smaller cities to quickly receive supplies, allows the country merchants to do a larger business upon a smaller capital, and enables him more promptly to furnish needed supplies to his customers.

104 Affiant further says that if said system of rate making by which, as stated aforesaid, the merchants at said cities are enabled to receive, handle, and ship out to the west merchandise at the same freight charges imposed upon a shipment through said cities to the west, should be abolished, and instead thereof there should be established the principle that through rates should be less than the sum of the local rates, the change would vitally affect all of said cities and the business thereof greatly to their injury. If such change were made merchants in the east could ship goods to the point of consumption in the west through the said cities at a lower freight charge than would be imposed upon the merchants at said cities in receiving, handling, and shipping to the same point of consumption in the west, a like amount of merchandise. If such change were made the merchants at said cities would no longer have the equality of opportunity in competition with the merchants in the east or west. If such change were made the merchants at said cities would be at a serious disadvantage in the distribution of merchandise in the west, as compared with their competitors in the east or their competitors in the west; since their said competitors would be enabled to deliver merchandise to the western point of consumption at a less freight charge than that imposed upon said merchants. The result of establishing such principle would tend toward giving merchants on the Atlantic seaboard a monopoly of the jobbing business throughout the west and would destroy the trade centers in the west now built up and in the end eliminate the existing competition between said western trade centers and the east.

Affiant further says that there is no valid reason why the railroads extending westward from the cities of Chicago and St. Louis  
105 should be compelled to carry merchandise between the Mississippi and Missouri rivers, or west thereof, at a lower rate when the said shipments originate at the Atlantic seaboard than is charged when similar shipments to similar points originate at Chicago or St. Louis.

Affiant further says that the system of rates now obtaining, as aforesaid, whereby rates "break" at the Mississippi River and at



the Missouri River, has obtained practically since railroads were constructed between said rivers; that the relation of rates involved in the said system whereby the rates for shipments from the Atlantic seaboard to the Missouri River were made up of the rate from the Atlantic seaboard to the Mississippi River, and the rate from the Mississippi River to the Missouri River was the same as the rate from the cities of Chicago and St. Louis to the cities upon the Missouri River, has obtained continuously for practically a quarter of a century.

Affiant further says that said system of rates and said relation of rates which has so long obtained would be completely overthrown if the principle should be established that the rate for the through haul should be less than the sum of the rates for the two shorter hauls; and affiant says that the equality of opportunity in competition heretofore enjoyed as aforesaid by merchants in said cities will be greatly impaired as above set forth, and their competitors given an advantage over them as above set forth, if the said change should be made. Affiant says that the commercial conditions of the entire central west, which, as aforesaid, are based upon and necessarily intimately related to the rate system always heretofore existing, will be revolutionized if the said change is made, and the effect of such change will be destructive and far-reaching in its evil results.

Affiant further says that up to the present time the distribution of merchandise and supplies has been a large and probably a predominant factor in the business and commerce of the cities located upon the Missouri River, and that these conditions seem likely to continue for a considerable period in the future; that if the said rate system which has long obtained and which has grown up through competitive conditions, if overthrown and the change aforementioned is forced upon the railroads, the result will necessarily be disastrous to the commercial interests of all said cities in the distribution of merchandise and supplies, since, as above set forth, those engaged in said business at said cities will be put at a disadvantage with respect to their competitors in the east and in the west. And thus the change will seriously injure the most important commercial interests of the said cities.

Affiant further says that by reason of the fact that under the system of rates whereby the charge for the long haul through all intermediate points is less than the sum of the charges for the shorter hauls to and from any intermediate points, the merchants at all intermediate points are, as aforesaid, denied equality of opportunity in competition with the merchants at either end of the line of railroad in the distribution of merchandise; and affiant says that the necessary result of such system of rate making is to centralize the business of the distribution of merchandise at the ends of the line of railroad.

Affiant further says that this is well illustrated by the fact that such system of rate making obtains on the lines of railroads between

the city of New York and the cities of Chicago and St. Louis; and as a result of the application of said system of rate making in said territory, jobbing houses at the intermediate cities between Chicago and St. Louis on the west and New York on the east, which in any substantial way competed with merchants at New York, Chicago, and St. Louis in the distribution of merchandise throughout  
107 the west have been largely forced out of business.

Affiant further says, upon information and belief derived from standard publications on transportation subjects, that the effect of a system of rate making which makes the continuous long haul cheaper than the two intermediate short hauls, in centralizing the business at the end of the line of railroads, is well illustrated by the experience of Australia. In Australia the railroads extending into the interior from the port of Sidney, in New South Wales, from Melbourne in Victoria, and from Adelaide in South Australia, have always applied and maintained a system of rates which did not "break" at any intermediate point; whereby the rate for the long haul was less than the sum of the rates for the two shorter hauls to and from an intermediate point; as a result of this system, the advantage which the shippers in the city at the end of the railroad had over the shippers at any intermediate point has forced, in large degree, the business involving transportation to the ports; and in 1901 there were living in Sidney 36% of the population of New South Wales; in Melbourne 41% of the population of Victoria, and in Adelaide 45% of the population of South Australia.

Affiant further says that the system of rate making which has obtained in the west as above set forth, whereby rates "break" on merchandise from the east at the Mississippi River, at the Missouri River, and at Denver and other points, has constantly been applied to the shipments from the west of the western products; that the rates on grain from points west of the Missouri River to New York are made up of the rates from point of origin to the Missouri River, plus the rates from the Missouri River to the Mississippi River, plus the rates from the Mississippi River to the city of New York, or the local rates from the point of origin to the Missouri River, plus  
108 the rate from the Missouri River to Chicago, plus the rate from Chicago to New York.

Affiant further says that the system of rate making whereby the rates on grain from the west "break" as above mentioned has been, and is, of great assistance to all shippers of grain, in that by virtue of this system intermediate markets for said grain have been established at the Missouri River, the Mississippi River, and Chicago; that at said points mills have been constructed and the various products of the grain manufactured; that the existence of these markets is of great value to the shippers of grain, in that it enables them to ship their grain by short hauls to the market, thereby preventing the damage to grain which would often happen from long

continuous shipments where the grain is not in good condition, which is frequently the case, especially in germinating periods. The existence of said markets is of great value to the shippers of grain because they provide a constant demand for the grain produced and afford an opportunity for a sale at any time and in any quantity; the existence of said markets is of great value to the shippers of grain, because they enable the surplus grain to be purchased from the producer and stored at the places wherein there will be the least freight charges involved, and also at the places from which the grain can be shipped to the points of ultimate consumption, avoiding all unnecessary railroad service and, therefore, all unnecessary freight charge.

Affiant further says that if the principle of rate making whereby rates "break" as above set forth be abolished and the principle established that the rate on grain for the through haul to New York from the point of production must be less than the sum of the charges from the point of production to any of the markets aforesaid, 109 and the rate from such market to New York, the existence of the said markets will be threatened and their development and usefulness will be very seriously impaired, and the said milling and other manufacturing interests practically destroyed.

Affiant further says that grain is handled in large quantities and at a very small margin of profit, and that any slight advantage in freight charges given to one point over another will radically change the movement of the grain.

Affiant further says that on various other products of the west the rates have long been so applied as to grant to the shipper privileges in all respects similar to those which accompany the breaking of rates; that on shipments of grain, the rates are so applied that at the milling points throughout the country the grain may be stopped en route at the mill, ground into flour or other product, and the product reshipped to the point of destination, all at the through rate from the point of origin to point of destination.

Affiant further says that east of the city of Chicago, at Toledo, Cleveland, Mansfield, Ohio, Akron, Buffalo, and Indianapolis, the rates on grain are so applied that grain may be stopped en route at said cities and put into elevators, and afterwards reshipped at the through rate from point of origin to destination.

Affiant further says that the same principle operates in very many instances in respect to lumber transportation; that the same principle is applied with respect to shipments of agricultural implements and vehicles, whereby these articles may be shipped from point of manufacture to points of concentration in the west and there stored, and afterward reshipped to points of ultimate destination at the through rate from point of manufacture to point of ultimate consumption.

110 Affiant further says that the principle inhering in the rate situation as above set forth, whereby commodities and articles may be handled en route and reshipped to destination without in-

crease in freight charge, is of vital importance to the commerce of the western country; that this privilege as accorded to grain is essential to the operation of and maintenance of mills throughout the entire western section; as applied to lumber, it is essential, where applied, to the operation of the milling industries; that as applied to agricultural implements and vehicles, it permits of the storage thereof at points permitting quick delivery to consumers when needed.

Affiant further says that the system of rate making whereby rates "break" at the Mississippi River and the Missouri River as above set forth, whereby merchants at those cities are enabled to receive, handle, and reship merchandise without increase in freight charges, is in all essential respects identical with the system whereby millers and elevators are allowed to receive, handle, and reship grain and its products without increase in freight charges, and the lumber mills are allowed to receive, handle, and reship lumber and its products without increase in freight charges, and the implement and vehicle dealers are allowed to receive, at their storage warehouses, implements and vehicles and reship from there without increase in the freight charges. And affiant says that the adoption of a principle which would require a charge for the through haul to be less than the sum of the charges for the two short hauls involved, would destroy the system of rate making whereby rates "break," as hereinabove set forth, and would destroy the system whereby grain, live stock, implements, lumber, and other commodities can be handled as above set forth and would be destructive of large local interests, both commercial and manufacturing.

Affiant further says that this system of rate making whereby  
 111 in the various methods above set forth, merchants and manufacturers may stop, handle, and reship merchandise and commodities without increase of freight charges, affects vitally all the important lines of business of the western country; and that a change in the system whereby these things should be forbidden would be a change which would revolutionize the methods of doing business throughout the western country, and would work injury to the west and its business, the extent of which would be so great as to be difficult of computation.

E. P. RIPLEY.

Subscribed in my presence and sworn to before me, this 11th day of June, 1909.

[SEAL.]

JOHN A. McDONALD,  
*Notary Public, Cook County, Illinois.*

My commission expires October 4, 1909.

(Endorsed:) Filed Jun. 22, 1909. H. S. Stoddard, clerk.

112 And on the same day, to wit, on the twenty-second day of June, 1909, there was filed in the clerk's office of said court in said entitled cause a certain affidavit in words and figures following, to wit:

113 In the Circuit Court of the United States within and for the Northern District of Illinois, Eastern Division.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,  
et al., complainants,

vs.

INTERSTATE COMMERCE COMMISSION, DEFENDANTS.

*Affidavit of James J. Hill.*

STATE OF MINNESOTA,

*County of Ramsey, ss:*

James J. Hill, being first duly sworn according to law, on oath deposes and says that he has been actively engaged in the operation of railroads for many years last past; that for 19 years he was president of the Great Northern Railroad Company, and that he is familiar with the establishment and development, in general, of the railroads of the west, and also with the commercial development of the western cities.

Affiant further says that railroads have been built to the city of Chicago and to the city of St. Louis from the east and there terminate; that other and independent railroads have been built from the cities of Chicago and St. Louis westward; that lines of railroad have been built to the cities of St. Paul, Omaha, Kansas City, Memphis, and New Orleans from the east and there terminate; that other and independent railroad systems have been built beginning at the cities of St. Paul, Omaha, Kansas City, Memphis, and New Orleans, respectively, and extending thence westward; that lines of railroad have been constructed to the city of Denver from the east and there terminate, and that other and independent lines of railroad have been constructed from the city of Denver westwardly therefrom.

114 Affiant further says that each of the said independent systems of railroad established its own tariff of charges for transportation over its line; that by reason of the fact that railroad systems have continuous lines of railroad from the Atlantic seaboard to the city of St. Louis, and the fact that said companies made the rates for the transportation of merchandise over said lines to the city of St. Louis from said Atlantic seaboard, and by reason of the further fact that the classification known as the Official Classification obtained upon shipments of all merchandise from the Atlantic seaboard to the city of St. Louis, the railroad companies whose lines reach from the Atlantic seaboard to the city of Chicago and the railroad companies whose lines extend from the city of Chicago to the Missouri River were compelled to apply through junctions with eastern lines at Chicago and Peoria and common junctions, to the Mississippi River, like rates to those applying from the seaboard to St. Louis; and to apply between the Mississippi River and the Mis-

souri River rates and classifications similar to those applying between the city of St. Louis and the Missouri River.

Affiant further says that the said railroad companies charge for the transportation of merchandise over their lines the rates fixed by said companies as aforesaid, excepting only in those cases wherein, by reason of competitive conditions, they were compelled to establish or join with other roads in establishing different rates to meet rates fixed by other roads and routes.

Affiant further says that the cities of Chicago, St. Louis, St. Paul, Omaha, Kansas City, and Denver were established trade centers before the railroads were constructed to or from said cities; and that each of the said cities, by virtue of its natural situation and facilities, had been established as a distributing center long prior to the time of the construction of the railroads to or from the same. And affiant

115 says that the fact that said cities were established trade centers and distributing points was the main determining factor which influenced the construction of the railroads to and from said cities.

Affiant further says that by reason of the fact that lines of railroad were built into said cities from the east and there terminated, and that independent lines of railroad were built from said cities westward, and the fact that each line of railroad established its separate tariff for the transportation of merchandise over its rails, the merchants of said cities were enabled to ship merchandise into said cities from the east and reship the same to points of consumption in the west at the same freight charge which was imposed when goods were shipped from the east through said cities to said westward points of consumption. As a consequence of this fact, the said merchants at said cities have equal opportunity in competition in the distribution of merchandise with the merchants in the east and with the merchants to the west of said cities, so far as their business is affected by freight rates.

Affiant further says that by reason of the natural situation of the said cities, and by reason of the natural advantages of said cities, and by reason of the general development of the west, the said cities have grown and the business thereof has expanded. And affiant further says that the growth and development of the said cities and of the business thereof has been stipulated by reason of the rate situation aforesaid and by reason of the equal opportunities which the said rate situation affords the merchants at said cities in competing with the merchants in the east and in the west. And affiant further says that the fact that under the said system of rates merchants at said cities enjoyed the said equality of opportunity in competition with the merchants of the east and west was a potent factor in the way of inducing the location in said cities of many mercantile enterprises and the investment of large sums of money in said cities in the establishment and development of mercantile establishments. And affiant further says that the commercial interests of the said cities have been dependent upon and intimately related to the



116 said system of rates and the said equality of opportunity in competition afforded thereby, and that all of the business of the said cities has for very many years been adjusted to the said rate system.

Affiant further says that in the economic development of the west, the establishment and development of the said cities as distributing centers has been an important if not an essential factor; that the distributing centers in the west by enabling the merchants in smaller cities to quickly receive supplies, allows the country merchant to do a larger business upon a smaller capital, and enables him to keep his supplies fresh, and also enables him more promptly to furnish needed supplies to his customers.

Affiant further says that if the said system of rate making by which, as aforesaid, the merchants at said cities are enabled to receive, handle, and ship out to the west merchandise at the same freight charge imposed upon a shipment through said cities to the west, should be abolished, and instead thereof there should be established the principle that through rates should be less than the sum of the local rates, the change would vitally affect all of the said cities and the business thereof greatly to their injury. If such change were made merchants in the east could ship goods to the point of consumption in the west through the said cities at a lower freight charge than would be imposed upon the merchants at cities in receiving, handling, and shipping to the same point of consumption in the west a like amount of merchandise. If such change were made the merchants at said cities would no longer have the equality of opportunity in competition with the merchants in the east or west. If such change were made the merchants at said cities would be at a serious disadvantage in the distribution of merchandise in the west, as compared with their competitors in the east or their competitors in the west, since their said competitors would be enabled to deliver merchandise to the western point of consumption at a less freight charge than that imposed upon said merchants. And affiant says that there is no valid reason

why the railroads extending westward from the cities of  
117 Chicago and St. Louis would be compelled to carry merchandise between the Mississippi and the Missouri rivers or west thereof, at a lower rate when the said shipments originate at the Atlantic seaboard than is charged when similar shipments to similar points originate at Chicago or St. Louis.

And affiant further says that no valid reason exists why the railroads which extend from the Missouri River to the city of Denver should be compelled to transport merchandise between said Missouri River and the city of Denver at a less rate when the shipments originate in the city of Chicago or the city of St. Louis than that charged for the transportation of similar merchandise when such shipments originate at cities upon the Missouri River.

Affiant further says that the system of rates now obtaining, whereby, as aforesaid, rates "break" at the Missouri River and at the Missouri River, has obtained practically since railroads were con-

structed between said rivers; that the relation of rates involved in the said system whereby the rates for shipments from the Atlantic seaboard to the Missouri River were made up of the rate from the Atlantic seaboard to the Mississippi River and the rate from the Mississippi River to the Missouri River, and whereby the rate from the cities of Chicago and St. Louis to the city of Denver was the same as the rate from the cities of Chicago and St. Louis to cities upon the Missouri River, and the rate from the said Missouri River cities to the city of Denver has obtained continuously for practically a quarter of a century. And affiant further says that the said system of rates and the said relation of rates which has so long obtained would be completely overthrown if the principle should be established that the rate for the through haul should be less than the sum of the rates for the two shorter hauls; and affiant says that the equality of opportunity in competition heretofore enjoyed as aforesaid by mer-

chants in said cities will be greatly impaired as above set forth,  
 118 and their competitors given an advantage over them as above set forth, if the said change should be made. And affiant says that the commercial conditions of the entire central west which, as aforesaid, are based upon and necessarily intimately related to the rate system always heretofore existing, will be revolutionized if the said change is made, and the effect of such change would be destructive and far-reaching in its evil results.

Affiant further says that, up to the present time, the distribution of merchandise and supplies has been a large, and probably a predominant factor in the business and commerce of the cities located upon the Missouri River, and that these conditions seem likely to continue for at least a considerable period in the future; that if the said rate system which has long obtained is overthrown and the change aforementioned is forced upon the railroads the result will be necessarily disastrous to the commercial interests of all said cities in the distribution of merchandise and supplies, since, as above set forth, those engaged in said business at said cities will be put at a disadvantage with respect to their competitors in the east and in the west. And thus the change will seriously injure the most important commercial interest of the said cities.

Affiant further says that by reason of the fact that under the system of rates whereby the charge for the long haul through all intermediate points is less than the sum of the charges for the shorter hauls to and from any intermediate point, the merchants at all intermediate points are, as aforesaid, denied equality of opportunity in competition with the merchants at either end of the line of railroad in the distribution of merchandise; and affiant says that the necessary result of such a system of rate making is to centralize the business of the distribution of merchandise at the ends of the line of railroad. Affiant further says that this is well illustrated by the fact that such system of rate making obtains on the lines of railroad between the city of New York and the cities of Chicago and St. Louis; and as a result of the application of said system of

119 rate making in said territory, jobbing houses at the intermediate cities between Chicago and St. Louis on the west and New York on the east, which in any substantial way competed with merchants at New York, Chicago, and St. Louis in the distribution of merchandise throughout the west, have been largely forced out of business.

Affiant further says, upon information and belief derived from standard publications on transportation subjects, that the effect of a system of rate making which makes the continuous long haul cheaper than the two intermediate short hauls, in centralizing the business at the end of the line of railroad, is well illustrated by the experience of Australia. In Australia, the railroads extending into the interior from the port of Sidney in New South Wales, from Melbourne in Victoria, and from Adelaide in South Australia, have always applied and maintained a system of rates which did not break at any intermediate point; whereby the rate for the long haul was less than the sum of the rates for the two shorter hauls to and from an intermediate point; as a result of this system, the advantage which the shippers in the city at the end of the railroad had over the shippers at any intermediate point has forced, in large degree, all business involving transportation to the ports; and in 1901, there were living in Sidney 36% of the population of New South Wales; in Melbourne 41% of the population of Victoria, and in Adelaide 45% of the population of South Australia.

Affiant further says that the system of rate making which has obtained in the west as above set forth whereby rates break on merchandise from the east at the Mississippi River, at the Missouri River, and at Denver and other points, has constantly been applied to the shipments from the west of the western products; that the rates on grain from points west of the Missouri River to New York are made up of the rates from point of origin to the Missouri River, plus the rates from the Missouri River to the Mississippi River, plus the rates from the Mississippi River to the city of New York, or the local rates from the point of origin to the Missouri River, plus the rate from the Missouri River to Chicago, plus the rate from Chicago to New York.

Affiant further says that the system of rate making whereby the rates on grain from the west break as above mentioned has been, and is, of great assistance to all shippers of grain, in that by virtue of this system intermediate markets for said grain have been established at the Missouri River, the Mississippi River, and Chicago; that at said points mills have been constructed and the various products of the grain manufactured; that the existence of these markets is of great value to the shippers of grain, in that it enables them to ship their grain by short hauls to the market, thereby preventing the damage to grain which would often happen from long, continuous shipments where the grain is not in good condition, which is frequently the case, especially in germinating periods; the existence of said markets is of great value to the shippers of grain because they provide a constant demand for the grain produced, and afford

an opportunity for a sale at any time and in any quantity; the existence of the said markets is of great value to the shippers of grain, because they enable the surplus grain to be purchased from the producer and stored at the places wherein there will be the least freight charges involved, and also at the places from which the grain can be shipped to the points of ultimate consumption, avoiding all unnecessary railroad service, and, therefore, all unnecessary freight charge.

Affiant further says that if the principle of rate making, whereby rates break as above set forth, is abolished, and the principle established that the rate on grain for the through haul to New York from the point of production must be less than the sum of the charges from the point of production to any of the markets aforesaid, and the rate from such market to New York, the existence of the said markets will be threatened and their development and usefulness will be very seriously impaired, and the said milling and other manufacturing interests practically destroyed. Affiant further says 121 that grain is handled in large quantities and at a very small margin of profit, and that any slight advantage in freight charges given to one point over another will radically change the movement of the grain.

Affiant further says that with respect to the live stock produced in the west, the rates to the consuming markets are applied practically upon the same basing principle. Upon shipments of live stock from the points of origin in the west, the rates are so applied that the shipper may ship his cattle to the stock yards at Fort Worth, in Texas; Kansas City or St. Joseph, in Missouri; or Omaha, in Nebraska; or Sioux City, in Iowa, and offer the live stock there for sale, and if no satisfactory price is obtained, the live stock may be shipped through to the city of Chicago or the city of St. Louis at the through rate from the point of origin.

Affiant further says that on various other products of the west the rates have long been so applied as to grant to the shipper privileges in all respects similar to those which accompany the breaking of rates; that on shipments of grain the rates are so applied that at the milling points throughout the country the grain may be stopped en route at the mill, ground into flour or other product, and the product reshipped to the point of destination, all at the through rate from the point of origin to point of destination. And this, affiant says, is the practice obtaining generally throughout the territory west of the city of Chicago.

Affiant further says that east of the city of Chicago at Toledo, Cleveland, Mansfield, Ohio; Akron, Buffalo, and Indianapolis, the rates on grain are so applied that grain may be stopped en route at said cities and put into elevators, and afterwards reshipped at the through rate from point of origin to destination.

Affiant further says that the same principle operates in very many instances in respect to lumber transportation. That the same 122 principle is applied with respect to shipments of agricultural implements and vehicles, whereby these articles may be shipped

from point of manufacture to points of concentration in the west and there stored, and afterwards reshipped to points of ultimate destination at the through rate from point of manufacture to point of ultimate consumption.

Affiant further says that the principle inhering in the rate situation as above set forth, whereby commodities and articles may be handled en route and reshipped to destination without increase in freight charges, is of vital importance to the commerce of the western country; that this privilege as accorded to grain is essential to the operation of and maintenance of mills throughout the entire western section; as applied to lumber, it is essential, where applied, to the operation of the milling industries; that as applied to agricultural implements and vehicles, it permits of the storage thereof at points permitting quick delivery to consumers when needed.

Affiant further says that the system of rate making whereby rates break at the Mississippi River, the Missouri River, and at the city of Denver, as above set forth, whereby merchants at those cities are enabled to receive, handle, and reship merchandise without increase in freight charges is in all essential respects identical with the system whereby millers and elevators are allowed to receive, handle, and reship grain and its products without increase in freight charges, and the lumber mills are allowed to receive, handle, and reship lumber and its products without increase in freight charges, and the implement and vehicle dealers are allowed to receive, at their storage warehouses, implements and vehicles and reship from there without increase in the freight charges. And affiant says that the adoption of a principle which would require a charge for the through haul to be less than the sum of the charges for the two short hauls involved, would destroy the system of rate making whereby rates break as hereinabove set forth, and would destroy the system whereby grain, live stock, implements, lumber, and other commodities can be handled as above set forth and would be destructive of large local interests, both commercial and manufacturing.

And affiant further says that this system of rate making whereby in the various methods above set forth, merchants and manufacturers may stop, handle, and reship merchandise and commodities without increase of freight charges, affects vitally all the important lines of business of the western country; and that a change in the system whereby these things should be forbidden, would be a change which would revolutionize the methods of doing business throughout the western country, and would work injury to the west and its business, the extent of which would be so great as to be difficult of computation.

JAS. J. HILL.

Subscribed in my presence and sworn to before me this 26th day of May, 1909.

[SEAL.]

E. C. BOOM,

*Notary Public, Hennepin County, Minn.*

My commission expires December 14th, 1910.

(Endorsed:) Filed Jun. 22, 1909. H. S. Stoddard, clerk.

124 And afterwards, to wit, on the twenty-fifth day of June, 1909, being one of the days of the regular December term of said court, 1908, in the record of proceedings thereof in said entitled cause, before the Honorable Peter S. Grosscup, the Honorable Francis E. Baker, and the honorable Christian C. Kohlsaat, circuit judges for the Seventh Judicial Circuit, appears the following entry, to wit:

125 CHICAGO, BURLINGTON & QUINCY  
Railroad Company, the Chicago,  
Rock Island & Pacific Railway Com-  
pany, Chicago & North Western Rail-  
way Company, Chicago, Milwaukee &  
St. Paul Railway Company, the Atchi-  
son, Topeka & Santa Fe Railway Com-  
pany, the Missouri Pacific Railway  
Company, Union Pacific Railroad Com-  
pany, Wabash Railroad Company

In Chancery. No. 29472.

vs.

THE INTERSTATE COMMERCE COMMISSION.

The above entitled cause having come duly on to be heard this 25th day of June, 1909, before the court, upon the application of the complainants herein for an interlocutory order suspending that certain order entered by the Interstate Commerce Commission, defendant, on the 2nd day of March, 1909, in that certain proceeding before said Interstate Commerce Commission entitled *George J. Kindel vs. New York, New Haven & Hartford Railroad Company et al*, being No. 951 on the docket of said commission, which said order is fully set forth in the bill of complaint herein, the said cause upon said application was argued and submitted to the court and the same was taken under advisement by the court.

And it appearing to the court that the decision upon said application will not be made until after the date at which the said order of the said Interstate Commerce Commission will become effective, and that the interests of justice require that the said order of the said Interstate Commerce Commission be suspended and its enforcement enjoined until the final determination by this court of the said application.

126 It is therefore ordered and decreed by the court that the said order of the Interstate Commerce Commission above described be and the same hereby is suspended, and the said Interstate Commerce Commission and its attorneys and representatives are temporarily restrained from taking any steps to enforce the same until the further order of this court.

127 And afterwards, to wit, on the thirteenth day of September, being one of the days of the regular July term of said court, 1909, in the record of proceedings thereof in said entitled cause, be-



fore the Honorable Peter S. Grosscup and the Honorable Christian C. Kohlsaat, circuit judges for the Seventh Judicial Circuit, appears the following entry, to wit:

128 CHICAGO, BURLINGTON & QUINCY  
Railroad Company, the Chicago,  
Rock Island & Pacific Railway Com-  
pany, Chicago & Northwestern Railway  
Company, Chicago, Milwaukee & St.  
Paul Railway Company, the Atchison,  
Topeka & Santa Fe Railway Company,  
the Missouri Pacific Railway Company,  
Union Pacific Railroad Company, and  
Wabash Railroad Company

In chancery. No. 29472.

*vs.*

THE INTERSTATE COMMERCE COMMISSION.

This cause came duly on to be heard at this term, upon motion for a temporary or interlocutory order, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows:

That the order made by the defendant Interstate Commerce Commission on the second day of March, 1909, in words and figures as follows:

"This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the commission being of the opinion that the present class rates applied by various of the above-named defendants to the transportation of traffic from Chicago, Ill., and St. Louis, Mo., to Denver, Colo., as set forth in paragraphs 2 and 4 hereof, are unjust and unreasonable, and that class rates for the transportation of such traffic between said points, as set forth in paragraphs 3 and 5 hereof, are just and reasonable, and having made and filed a report containing its conclusions thereon, which said report is hereby referred to and made a part of this order:

"It is ordered, that defendants, Chicago, Burlington & Quincy Railroad Company, Chicago, Rock Island & Pacific Railway Company, Chicago & Northwestern Railway Company, Chicago, Milwaukee & St. Paul Railway Company, Atchison, Topeka & Santa Fe Railway Company, Missouri Pacific Railway Company, Union Pacific Railroad Company, and Wabash Railroad

Company, be and they are hereby required to cease and desist, on or before the 1st day of May, 1909, and for a period of not less than two years thereafter abstain from exacting for the transportation of

traffic from Chicago, Ill., to Denver, Colo., their present class rates in cents per 100 pounds as follows:

Class -----	1	2	3	4	5	A	B	C	D	E
Rate -----	205	165	125	97	77	92	72	62	53½	46

It is further ordered, that said defendants are hereby notified and required to establish, on or before the 1st day of May, 1909, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of traffic from Chicago, Ill., to Denver, Colo., class rates in cents per 100 pounds not exceeding the following:

Class -----	1	2	3	4	5	A	B	C	D	E
Rate -----	180	145	110	85	67	80½	63	54	47	40

It is further ordered, that said defendants be, and they are hereby, required to cease and desist, on or before the 1st day of May, 1909, and for a period of not less than two years thereafter abstain, from exacting for the transportation of traffic from St. Louis, Mo., to Denver, Colo., their present class rates in cents per 100 pounds as follows:

Class -----	1	2	3	4	5	A	B	C	D	E
Rate -----	185	145	115	92	72	84½	64½	57	48½	41

It is further ordered, that said defendants are hereby notified and required to establish, on or before the 1st day of May, 1909, and maintain in force thereafter during a period of not less than two years, and apply to the transportation of traffic from St. Louis, Mo., to Denver, Colo., class rates in cents per 100 pounds not exceeding the following:

Class -----	1	2	3	4	5	A	B	C	D	E
Rate -----	162	127	101	80½	63	74	56	50	42	36

And it is further ordered, that said defendants be, and they  
130 are hereby, authorized to make effective upon three days' notice to the public and to the Interstate Commerce Commission, given in the manner required by law, the various rates which said defendants are by this order required to establish and put in force on or before the 1st day of May, 1909, in which event tariffs in which such rates are shown must contain the notation that they are issued under the authority hereby granted, and must refer to the number of this case," and any subsequent order or orders extending the time for putting the foregoing order into force and effect, and each and all thereof, be, and the same are hereby suspended and the enforcement of each and all thereof be and the same hereby is, restrained and enjoined until the further order of this court.

131 And on the same day, to wit, on the thirteenth day of September, 1909, there was filed in the clerk's office of said court in said entitled cause a certain petition for appeal, in words and figures following, to wit:

132 In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

CHICAGO, BURLINGTON & QUINCY RAILROAD Company, the Chicago, Rock Island & Pacific Railway Company, Chicago & Northwestern Railway Company, Chicago, Milwaukee & St. Paul Railway Company, the Atchison, Topeka & Santa Fe Railway Company, the Missouri Pacific Railway Company, Union Pacific Railroad Company, and Wabash Railroad Company

In Chancery. No. 29472.

vs.

INTERSTATE COMMERCE COMMISSION.

*Petition for appeal.*

The Interstate Commerce Commission, being a bureau or department of the Government of the United States, by Edwin W. Sims, United States attorney for the Northern District of Illinois, and Luther M. Walter, special assistant to the said United States attorney, being thereunto duly authorized, represents that in the decree or order of said circuit court in the above stated case, rendered on the 13 day of September, 1909, there is manifest error to its injury; and, therefore, prays for an order granting an appeal from said decree to the Supreme Court of the United States.

EDWIN W. SIMS.

*United States Attorney.*

LUTHER M. WALTER,

*Special Assistant to the United States Attorney.*

(Endorsed:) Filed Sep. 13, 1909. H. S. Stoddard, clerk.

133 And on the same day, to wit, on the thirteenth day of September, 1909, there was filed in the clerk's office of said court in said entitled cause a certain assignment of errors, in words and figures following, to wit:

134 In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, The Chicago, Rock Island & Pacific Railway Company, Chicago & Northwestern Railway Company, Chicago, Milwaukee & St. Paul Railway Company, The Atchison, Topeka & Santa Fe Railway Company, the Missouri Pacific Railway Company, Union Pacific Railroad Company, and Wabash Railroad Company,

In Chancery.  
No. 29472.

vs.

INTERSTATE COMMERCE COMMISSION,

*Assignment of errors.*

Now comes the Interstate Commerce Commission, by Edwin W. Sims, United States attorney for the Northern District of Illinois, and Luther M. Walter, special assistant to the said United States attorney, and charges that in the order and decree rendered by said Circuit Court for said district in the above entitled cause on the 13 day of September, 1909, wherein and whereby said court granted a preliminary injunction restraining and enjoining the enforcement of the same, and in the record and proceedings therein, there is manifest error to its injury, in this, to wit:

1. Said Circuit Court erred in not dismissing complainants' bill for want of equity.
2. Said Circuit Court erred in not dismissing the bill of complaint for want of jurisdiction.
3. Said Circuit Court erred in holding that the Interstate Commerce Commission was without power to make the order complained of.
4. Said Circuit Court erred in holding and decreeing that  
135 the order complained of entered by the commission on March 2, 1909, was void and of no effect.
5. Said Circuit Court erred in ordering that said order of the commission be suspended and its attorneys, agents, and employees be restrained and enjoined from enforcing the same pending the further progress of this suit.
6. Said Circuit Court erred in holding that two of the three circuit judges had jurisdiction to enter the decree of the 13 day of September, 1909, suspending the order of the commission.
7. Said Circuit Court erred in holding that there was no inquiry by the Interstate Commerce Commission respecting the reasonableness or unreasonableness of the rates between Chicago and St. Louis and Denver other than on the zone theory of apportioning trade.
8. Said Circuit Court erred in permitting to be filed by complainants affidavits of James J. Hill, Marvin Hughitt, and E. P. Ripley in support of the application for preliminary injunction.

Wherefore, the Interstate Commerce Commission prays that the decree of said Circuit Court entered on the 13 day of September, 1909, be reversed and that said Circuit Court be ordered to enter a decree dismissing the petition or bill of complaint in the above-entitled cause by said complainants against said Interstate Commerce Commission.

EDWIN W. SIMS,  
*United States Attorney.*  
LUTHER M. WALTER,

*Special Assistant to the United States Attorney.*

(Endorsed:) Filed, Sep. 13, 1909. H. S. Stoddard, clerk.

136 And on the same day, to wit, on the thirteenth day of September, being one of the days of the regular July term of said

court, 1909, in the record of proceedings thereof in said entitled cause, before the Honorable Peter S. Grosscup, the Honorable Francis E. Baker, and the Honorable Christian C. Kohlsaat, circuit judges for the Seventh Judicial Circuit, appears the following entry, to wit:

137 In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

CHICAGO, BURLINGTON & QUINCY RAIL-  
road Company, the Chicago, Rock  
Island & Pacific Railway Company,  
Chicago & Northwestern Railway Com-  
pany, Chicago, Milwaukee & St. Paul  
Railway Company, the Atchison, To-  
peka & Santa Fe Railway Company,  
the Missouri Pacific Railway Company,  
Union Pacific Railroad Company, and  
Wabash Railroad Company

In chancery. No. 29472.

vs.

INTERSTATE COMMERCE COMMISSION.

In this cause, the Interstate Commerce Commission, by Edwin W. Sims, United States attorney for the Northern District of Illinois, and Luther M. Walter, special assistant to the said United States attorney, thereunto duly authorized, having made its application in writing for an appeal from the decree therein, rendered on the 13 day of September, 1909, to the Supreme Court of the United States, and it appearing that the matter in dispute in said cause exceeds the sum of \$2,000, exclusive of costs, it is, therefore, ordered that said appeal be and the same is hereby granted and made returnable on the 13 day of October, 1909.

138 In the Circuit Court of the United States for the Northern Dis-  
trict of Illinois, Eastern Division.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY  
et al.,  
vs.

No. 29472.

THE INTERSTATE COMMERCE COMMISSION.

*Præcipe for record.*

*To the clerk of the above-entitled court:*

You will please prepare a transcript of the record in the above-entitled cause, to be filed in the office of the clerk of the Supreme Court of the United States, upon the appeal of the defendant, the Interstate Commerce Commission, and include in said transcript the following pleadings, proceedings, and papers on file or of record, to wit:

Bill of complaint, filed May 18, 1909, including all exhibits.  
Chancery subpoena, issued May 18, 1909, with marshal's return thereon endorsed.

Certificate of Attorney-General, filed May 21, 1909.

Demurrer of defendant, filed June 14, 1909.

Affidavit of Marvin Hughitt, filed June 22, 1909.

Affidavit of E. P. Ripley, filed June 22, 1909.

Affidavit of James J. Hill, filed June 22, 1909.

Order of June 25, 1909.

Order of September 13, 1909.

Petition for appeal, filed September 13, 1909.

Assignment of errors, filed September 13, 1909.

Order allowing appeal entered September 13, 1909.

LUTHER M. WALTER,  
*Sol. for Deft.*

(Endorsed:) Filed Sep. 20, 1909. H. S. Stoddard, clerk.

139 NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION, *ss*:

I, Henry S. Stoddard, clerk of the Circuit Court of the United States for the Northern District of Illinois, do hereby certify the above and foregoing to be a true and complete transcript of the proceedings had of record in said court made in accordance with the præcipe filed in the said cause, entitled Chicago, Burlington & Quincy Railroad Company et al. vs. The Interstate Commerce Commission, general number 29472, as the same appear from the original records and files of said court now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in the city of Chicago, in said district, this 8th day of October, 1909.

[SEAL.]

H. S. STODDARD, *Clerk*,  
By THOMAS V. SELL, *Deputy Clerk*.

140 In the Circuit Court of the United States, Northern District of Illinois, Eastern Division.

CHICAGO, BURLINGTON & QUINCY RAIL-  
road Company, the Chicago, Rock  
Island & Pacific Railway Company,  
Chicago & Northwestern Railway Com-  
pany, Chicago, Milwaukee & St. Paul  
Railway Company, the Atchison, To-  
peka & Santa Fe Railway Company,  
the Missouri Pacific Railway Company,  
Union Pacific Railroad Company, and  
Wabash Railroad Company

In chancery. No. 29472.

*vs.*

INTERSTATE COMMERCE COMMISSION.



*Citation on appeal.*

*The President of the United States to the Chicago, Burlington & Quincy Railroad Company, the Chicago, Rock Island & Pacific Railway Company, Chicago & Northwestern Railway Company, Chicago, Milwaukee & St. Paul Railway Company, the Atchison, Topeka & Santa Fe Railway Company, the Missouri Pacific Railway Company, Union Pacific Railroad Company, and Wabash Railroad Company, or to William D. McHugh and Samuel A. Lynde, their solicitors of record, greeting:*

You are hereby cited and admonished to be and appear before the Supreme Court of the United States at Washington, D. C., within thirty days from the date hereof, pursuant to the appeal sued out and filed in the clerk's office in the United States Circuit Court for the

Northern District of Illinois, Eastern Division, in the cause  
141 wherein the Interstate Commerce Commission was defendant and said Chicago, Burlington & Quincy Railroad Company, the Chicago, Rock Island & Pacific Railway Company, Chicago & Northwestern Railway Company, Chicago, Milwaukee & St. Paul Railway Company, the Atchison, Topeka & Santa Fe Railway Company, the Missouri Pacific Railway Company, Union Pacific Railroad Company, and Wabash Railroad Company were complainants, to show cause, if any there be, why the decree rendered against the said Interstate Commerce Commission, as in said petition for appeal mentioned, should not be corrected and why speedy justice should not be done in that behalf.

Witness the Honorable Peter S. Grosscup, Francis E. Baker, and Christian C. Kohlsaatt, United States circuit judges for said Seventh Judicial Circuit, this 13 day of September, in the year of our Lord one thousand nine hundred and nine.

P. S. GROSSCUP,  
FRANCIS E. BAKER,  
C. C. KOHLSAAT,  
*Circuit Judges.*

Service of a copy of the within citation is hereby acknowledged this 18th day of September, 1909.

WILLIAM D. McHUGH,  
*Solicitor for Complainants.*

(Indorsement on cover:) File No. 21867. N. Illinois, C. C. U. S. Term No. 641. The Interstate Commerce Commission, appellant, vs. Chicago, Burlington & Quincy Railroad Company et al. Filed October 15th, 1909. (21867.)



# In the Supreme Court of the United States.

OCTOBER TERM, 1909.

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INTERSTATE COMMERCE COMMISSION, appellant, v. CHICAGO, BURLINGTON & QUINCY Railroad Company et al., appellees.	}	No. 641.
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*ON APPEAL FROM THE CIRCUIT COURT OF THE UNITED  
STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.*

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## MOTION TO ADVANCE.

On behalf of the appellant, the Solicitor-General respectfully moves the court to advance the above-entitled cause for hearing during the present term, for the following reasons:

1. The cause is a proceeding in equity under section 16 of the act to regulate commerce, approved February 4, 1887, as amended June 29, 1906, brought by appellees in the Circuit Court of the United States, to enjoin the enforcement of an order of the appellant, made under and by virtue of the provisions of said act.

2. On March 2, 1909, the Interstate Commerce Commission, after a hearing before it upon complaint,

made an order reducing the rate to be charged by the Chicago, Burlington & Quincy Railroad Company, the Chicago, Rock Island & Pacific Railway Company, Chicago & North Western Railway Company, Chicago, Milwaukee & St. Paul Railway Company, the Atchison, Topeka & Santa Fe Railway Company, the Missouri Pacific Railway Company, Union Pacific Railroad Company, and Wabash Railroad Company, for the transportation of articles of the first class from Chicago, Ill., to Denver, Colo., from \$2.05 to \$1.80 per 100 pounds, and from St. Louis, Mo., to Denver, Colo., from \$1.85 to \$1.62 per 100 pounds; and a similar reduction was made on articles of second, third, fourth, and fifth classes and classes A, B, C, D, and E. The Commission prescribed as the effective date of the order May 1, 1909, which was later changed by the Commission to July 1, 1909. On May 18, 1909, the above-named railroad companies filed a bill of complaint against the Interstate Commerce Commission praying the court to enjoin the enforcement of said order. June 12, 1909, a demurrer was filed by the Commission. After argument, the court entered a restraining order, effective until it could determine the issues in the case of the *Interstate Commerce Commission v. The Chicago, Rock Island and Pacific Railway Company et al.*, No. 663 on the docket for the present term. Thereafter, on September 13, 1909, a preliminary injunction, effective until the final hearing of the case, was issued by Judges Grosscup and Kohlsaas, Judge Baker dissenting. The order of the Commission was enjoined on the

ground that the Commission was without power to make the order complained of.

The case involves the power of the Commission, as well as the power of the courts to review and supervise the action of the Commission, in prescribing rates for the future.

3. The speedy determination of the lawfulness of the Commission's order prescribing rates for the future and the extent to which the judicial power can supervise the action of the Commission is a matter of great public importance.

4. The act to regulate commerce, approved February 4, 1887, as amended June 29, 1906, in section 16, makes the provisions of "An act to expedite the hearing and determination of suits in equity," and so forth, approved February 11, 1903, applicable to all such suits, and said section provides that cases of this character shall have in this court "priority in hearing and determination over all other causes except criminal causes."

As the questions involved in this case are similar to those involved in Nos. 663 and 664 of this term, it is suggested that this case be set for hearing upon the same day.

I am authorized to state that counsel for the appellees concur in this motion.

LLOYD W. BOWERS,  
*Solicitor-General.*

DECEMBER, 1909.







No. 121

THE NATIONAL GUARDIAN OF THE PEOPLE

London, 1st June 1891

The National Guardian of the People, at 11, Abchurch Lane, London, E.C. 4, is hereby notified that the following is the list of the names of the persons who have been elected to the office of the National Guardian of the People for the year 1891.

THE NATIONAL GUARDIAN OF THE PEOPLE, at 11, Abchurch Lane, London, E.C. 4, is hereby notified that the following is the list of the names of the persons who have been elected to the office of the National Guardian of the People for the year 1891.

THE NATIONAL GUARDIAN OF THE PEOPLE, at 11, Abchurch Lane, London, E.C. 4, is hereby notified that the following is the list of the names of the persons who have been elected to the office of the National Guardian of the People for the year 1891.



# In the Supreme Court of the United States.

OCTOBER TERM, 1909.

THE INTERSTATE COMMERCE COMMISSION,	}	No. 641.
appellant,		
v.		
CHICAGO, BURLINGTON & QUINCY RAIL- road Company et al.		

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR THE INTERSTATE COMMERCE COMMISSION.

## STATEMENT.

This case comes here upon appeal from a decree by a majority of the judges of the Circuit Court for the Northern District of Illinois, temporarily restraining and enjoining the enforcement of an order of the appellant. In many respects this case is similar to the one in No. 663, this term, *Interstate Commerce Commission v. Chicago, Rock Island & Pacific Ry. Co. et al.* This brief will simply set forth the facts and issues and will refer to the argument contained in appellant's brief in No. 663.

The opinion of the court below and the dissenting opinion of Judge Baker is contained in the record in No. 663, pages 1054-1062.

To the bill of complaint were attached as exhibits the complaint of George J. Kindel against certain carriers (Rec., pp. 20-28), and the opinion of the Commission upon said complaint (Rec., p. 28); certain affidavits were submitted in support of the bill of complaint (Rec., pp. 43-63).

#### ACT OF THE COMMISSION.

George J. Kindel, a merchant and manufacturer of Denver, Colo., filed with the Interstate Commerce Commission December 14, 1906, his petition of complaint attacking certain rates charged by certain carriers from New York, Chicago, St. Louis, Omaha, and points taking similar rates to Denver, on the ground that the same were excessive and discriminatory, and attacking rates from Denver to Salt Lake City upon similar grounds. By amended complaints the complainant attacked class rates from Chicago and St. Louis and the Missouri River cities to Denver. Allegations as to certain commodity rates and certain class rates were also contained in the complaint and amended complaint, but these were not specific, and the testimony before the Commission as well as arguments, oral and by brief, were directed to the class rates from Chicago, St. Louis, and the Missouri River cities to Denver. The rates complained of from Chicago to Denver were made up of the local rate from Chicago

to the Missouri River cities plus the local rate from Missouri River to Denver. The rates complained of were as follows, on the various classes from Chicago to the Missouri River:

Class .....	1	2	3	4	5	A	B	C	D	E
Rate.....	80	65	45	32	27	32	27	22	18½	16

To which rates were added class rates from Missouri River crossings to Denver as follows:

Class .....	1	2	3	4	5	A	B	C	D	E
Rate.....	125	100	80	65	50	60	45	40	35	30

Making a total rate from Chicago to Denver in cents per 100 pounds, as follows:

Class .....	1	2	3	4	5	A	B	C	D	E
Rate.....	205	165	125	97	77	92	72	62	53½	46

The class rates from St. Louis to Denver were made up of the local class rates from St. Louis to the Missouri River, plus the local class rates from the Missouri River to Denver. The local class rates from St. Louis to the Missouri River were in cents per 100 pounds, as follows:

Class .....	1	2	3	4	5	A	B	C	D	E
Rate.....	60	45	35	27	22	24½	19½	17	13½	11

These last-mentioned rates added to the local class rates from Missouri River to Denver as above given made a through rate from St. Louis to Denver in cents per 100 pounds, as follows:

Class .....	1	2	3	4	5	A	B	C	D	E
Rate.....	185	145	115	92	72	84½	64½	57	48½	41

These rates complained of were found by the Commission to be unjust and unreasonable, and the Commission prescribed as maximum rates from

Chicago to Denver the following in cents per 100 pounds:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate.....	180	145	110	85	67	80½	63	54	47	40

The Commission also prescribed as maximum rates for the transportation from St. Louis to Denver in cents per 100 pounds the following:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate.....	162	127	101	80½	63	74	56	50	42	36

Answers were duly filed by all the carriers against whom the complaint before the Commission was directed, testimony was taken, briefs were filed, and oral arguments were had before the Commission. After full consideration the Commission filed its report, which is correctly set forth as Exhibit C to the bill of complaint (Rec., p. 28), and issued its order, which is correctly set forth in the bill of complaint (Rec., p. 11). The order was thereafter served upon the complainants and would have become effective May 1, 1909, but by order of the Commission the date of its going into effect was extended until June 1, 1909. The bill of complaint was filed May 18, 1909. A stay order was issued by the Circuit Court, which order remained in effect until final hearing was had in the case of the *Chicago, Rock Island & Pacific Railroad Company et al v. Interstate Commerce Commission*, at which time a temporary injunction herein was issued, from which decree this appeal has been taken.



## BILL OF COMPLAINT.

The bill of complaint attacked the order of the Commission on two general grounds; first, that the order was in excess of the powers conferred upon the Commission, and secondly that it deprived complainants of the right to charge their just and reasonable rates by compelling them to charge rates prescribed by the Commission, which latter rates would not give "to the carriers a fair and reasonable return for the services rendered by them in the transportation of goods and merchandise from Chicago and St. Louis and east thereof to Denver." In support of the allegation that the order of the Commission was in excess of the power conferred upon it complainants alleged:

(1) That the order was entered without regard to the issues and to the evidence offered before the Commission and that no evidence was offered by complainant in support of his allegation that the class rates were unreasonable and excessive, except certain comparisons of rates per ton per mile to other points, and without any evidence being offered or it being claimed by him that conditions with respect to rates used by him in such comparisons were similar.

(2) That the order was made by the Commission for the express purpose of destroying the Missouri River as a basing point in the making of rates from Chicago, St. Louis, and eastern territory to territory west of the Missouri River, including Denver, and for the purpose of substituting in place of said

basing-point system a system of making through rates regardless of basing lines, and lower than the rates to and from basing points.

(3) That the order is unreasonable and unjustly discriminatory against the Missouri River cities and in favor of Chicago and St. Louis and territory east thereof, in that it gives to Chicago and St. Louis an advantage over said Missouri River cities of 25 and 23 cents, respectively, on first class and a corresponding advantage on other classes, as compared with the existing relation of rates.

(4) That it costs more to operate west of the Missouri River than in territory east thereof; that rates complained of before the Commission were reasonable and just and did not afford to the carriers anything more than a fair return for the services rendered by them; that the reduction prescribed by the Commission would, if the order goes into effect, deprive complainants "of their property without due process of law, in violation of the fifth amendment to the Constitution of the United States."

It was further averred that to put into effect the rates prescribed by the Commission would necessitate a readjustment and realignment of rates throughout the western territory, which readjustment and realignment would cause complainants to reduce their revenue more than \$———— (amount not stated; Rec., p. 17).

The Attorney-General filed his certificate in accordance with the expediting act May 21 1909.

Thereafter the Commission filed its demurrer, based substantially upon the following grounds:

(a) That the Commission had in every respect complied with the statutory procedure in making its order; that there was no allegation of fraud.

(b) That the bill failed to state any fact from which the court could determine from the face of the bill that the rates prescribed by the Commission were unreasonably low or confiscatory; that such allegations as attempted to plead confiscation were mere conclusions of the pleader.

There was no argument upon the demurrer, and the same is as yet undisposed of. In support of the application for a preliminary injunction complainants filed the affidavit of Marvin Hughitt, president of the Chicago & Northwestern Railway Company; the affidavit of E. P. Ripley, president of the Atchison, Topeka & Santa Fe Railway Company; and of James J. Hill, who for nineteen years was president of the Great Northern Railroad Company. To the filing of these affidavits counsel for the defendant objected on the ground that they were immaterial and irrelevant, being intended only to show that the system of making through rates less than the sum of the locals would affect vitally all important lines of business in the country and would work injury to the West and its business.

## REPORT OF THE COMMISSION.

The report of the Commission speaks for itself, but for the convenience of the court and of counsel we call attention to certain specific parts thereof. The application for the preliminary injunction was predicated largely upon the arguments made in the Burnham, Hanna, Munger case and there is no testimony whatever to show that the rates prescribed by the Commission would not afford to the carriers using the same all proper and fair remuneration for the services performed. An examination of the report of the Commission shows that the complaint, hearings, and argument were all directed to the issue of whether the rates complained of were just and reasonable and what would be just and reasonable rates. Material portions of the Commission's report are as follows:

The complaint specifically alleged that the rates from Chicago, St. Louis, and the Missouri River to Denver were excessive, but the allegation respecting rates from Denver to Utah points was in general terms. (Rec., p. 28.)

The commissioner who took the testimony stated at the hearing that it was doubtful if the Commission could make a general order of the kind which complainant desired on a general complaint like that in question, and still more doubtful if it would undertake to do so in this particular case. Thereupon the complainant, before any testimony had been introduced by defendants, amended his com-

plaint by filing the class rates from Chicago, St. Louis, and Omaha to Denver, and from Denver to Utah points, alleging that same were excessive and that they should be reduced. He later filed a list of commodities as to which he desires a specific order.

Witnesses were introduced by complainant who testified to particular rates and regulations which were alleged to be unreasonable, but many of such matters were not referred to in the complaint and defendants had no notice, until the testimony was introduced, that they would be subjects of investigation. Hence the matters thus complained of are not before us in such manner that any order can be entered with relation thereto, but assuming the testimony introduced as to them to be correct, it would seem that some new adjustment should be had. However, if satisfactory adjustment is not made we can deal with the question only under a complaint which properly raises those points. We are authorized to reduce a rate, or to modify a rule of practice which affects a rate, only after full hearing upon complaint, and no order can be entered by the Commission affecting a carrier's rates or regulations except after such carrier has been given full and fair opportunity to be heard.

The testimony showed that the bulk of the traffic to and from Denver moves under class rates. The general question presented, therefore, is an adjustment of the class rates from Chicago, St. Louis, and the Missouri River to Denver, and from Denver to Utah points.

While complainant alleges that the rates to and from Denver are excessive, and while the testimony reinforces this assertion, the grievance most insisted upon was that the present adjustment of rates favors cities upon the Missouri River, of which Kansas City is fairly illustrative, and unjustly discriminates against Denver.

The first-class rate from Chicago to Kansas City is 80 cents, and from Kansas City to Utah common points \$2.05, making a through rate, based on Kansas City, of \$2.85. From Chicago to Denver the first-class rate is \$2.05, and from Denver to Utah points \$1.64, making a through rate, based on Denver, of \$3.69, higher than the combination on Kansas City by 84 cents. The service rendered by defendants is the same in either case (except that in one instance the traffic might be unloaded at Kansas City and in the other instance at Denver), and in the Utah territory the merchant at Denver is at a decided disadvantage as compared with his competitor at Kansas City, in dealing in commodities that originate east of the Missouri River, while the manufacturer at Denver is under a like disadvantage, as compared with the manufacturer at Kansas City if the raw material comes from east of the Missouri River.

This advantage held by the dealers and manufacturers at Kansas City and other Missouri River cities is due to the fact that the carriers have made the Missouri River a basing line for rate-construction purposes—that is, rates from points east of that river to points



west thereof are made by adding together the rates to the river points and the rates from the river points; and to Denver and Utah points and to a great expanse of territory lying west of the Missouri River the through rates are made up from the sums of the rates to and from the Missouri River basing-line cities. The first-class rate from Chicago to the Missouri River is 80 cents, from the Missouri River to Denver it is \$1.25, and from Chicago to Denver it is the sum of these two, or \$2.05. As to Denver, therefore, the dealer in Kansas City can purchase at Chicago or other eastern points, ship to Kansas City, and reship to Denver at the same total rate that is charged the Denver dealer if he ships direct from Chicago or some other eastern point. (Rec., p. 29.)

The carriers can haul traffic from Chicago direct to Denver cheaper than they can haul it to Kansas City, permit it to be unloaded, and at some subsequent time reloaded and forwarded to Denver. The rate for a long through haul should ordinarily be less than the combination of two or more local rates that are included within that distance over the same lines. Through rates for long hauls are necessary to the development of the country and to the removal of such discriminations as Denver complains of in this instance.

We see no good reason for withholding from Denver reasonable through rates for through service. Rates made up on combination on a closely adhered to basing line must be made with regard to the cost of the terminal services, which is necessarily high. If traffic

moving from Chicago to Denver is sold, resold, unloaded, and reloaded at Kansas City, the Denver dealers and the consumers of that traffic must pay the profits and extra costs involved in those transactions. The combination rate must include the cost of that extra service. If, on the other hand, the traffic moves directly through from Chicago to Denver, the cost of the extra terminal service at Kansas City is saved to the carriers, and, as the cost is provided for in the rate that is applied to such through movement, the rate is too high if that cost is not incurred, except in cases in which the combination rate is made up from factors which are so low in themselves as to result in a reasonably low through rate. While it is proper in fixing rates for transportation to give consideration to commercial conditions and needs, rates for services over the same lines, between the same points, but under differing conditions, must be made with some consideration for the difference in the cost of the service.

In *Burnham, Hanna, Munger Dry Goods Co. et al. v. Chicago, Rock Island & Pacific Ry. Co. et al.* (14 I. C. C. Rep., 299), we dealt with the complaint of Kansas City and other Missouri River cities against rates from the Atlantic seaboard to the Missouri River cities made on combination on the basing line at the Mississippi River crossings. (Rec., p. 30.)

We there dealt with through rates that were constructed by adding together the rates from points of origin to the Mississippi River crossings and the rates from the Mississippi River cross-

ings to the Missouri River cities, no through joint rates being in effect. In the present case some of the defendants have their own lines and their individual rates from Chicago to Denver; others of the defendants unite in joint through rates. (Rec., p. 32.)

The present rate adjustment is, in our opinion, unjustly discriminatory against Denver and in favor of Kansas City and other Missouri River crossings. This discrimination can be removed only by the establishment of some new relation of rates, and it is not within the authority or power of this Commission to remove it except through a reduction in rates, which necessarily operates to reduce the revenues of the defendants.

In considering a new adjustment or relationship of rates, it is necessary and proper to take into consideration all the interests involved, as well as those of complainant and defendants herein. A new relationship or adjustment of rates affects the interests of other communities and commercial centers, and in making an adjustment to remove the discriminations found in this case action should be in harmony with the principles that have been adopted in other readjustments. Justice can not be done by prescribing an adjustment which might serve to satisfy the complaint in this case if the effect of it is to impose upon some other persons or localities the burden that is lifted from the complainant herein. (Rec., p. 32.)

As has been seen, the present rate adjustment between the East and the West is built upon basing lines at the Mississippi River

and at the Missouri River. The Ohio River crossings form a similar basing line on traffic to and from the southeast, but no other such basing lines exist between the Atlantic seaboard and the West. It is not possible to have a rate adjustment which places all towns and cities upon an exact equality. Some places possess advantages of natural location which, together with other influences, have made them commanding commercial centers in a certain territory, and consideration must be given to such advantages and development in readjusting rates in cases where development, increase in population, growth of manufacturing and production, and increased traffic on railroads, warrant changes in the rate adjustments which have obtained in the past.

In the *Burnham, Hanna, Munger case* (*supra*) we did not reduce the local class rates between the Mississippi and the Missouri rivers; we did order a reduction in the separately established rates applicable to through business, through joint rates from the East to the Missouri River cities not being in existence and not being prescribed, because of the fact that east of Chicago and the Mississippi River Official Classification governs the tariffs and west of Chicago and the Mississippi River Western Classification governs. Following the principle there established, we think that here the class rates from Chicago to Denver and from St. Louis to Denver should be less than the sums of the local rates based on the Missouri River.

Rates to points in Colorado other than Colorado common points, and, as we understand it, to many points in New Mexico and Wyoming, are based upon the Colorado common-point rates, and rates are so adjusted that in distribution of traffic brought from the East the Colorado common points have the State of Colorado and some points outside thereof as practically exclusive territory.

In the Spokane case (15 I. C. C. Rep., 376) we held that the reasonableness of a rate between two points served by two or more carriers could not be determined by consideration alone of that line which is shortest and most favorably situated as to operations, earnings, etc., but that the entire situation must be considered.

This record does not disclose the expense of building the railroads between Chicago and Denver, but in other cases estimates of cost of constructing lines in Kansas and southern Nebraska have been laid before us, and from a general knowledge of the territory and the lines serving same we are convinced that there is nothing unusual in the original cost of building or in the present cost of maintaining roads through this open territory which is generally free from heavy grades. The country lying between the Missouri River and Denver does not present difficulties in railroad building or maintenance substantially greater than are presented by the territory between the Mississippi and Missouri rivers. Generally the density of traffic is less west of the Missouri River

and there are other reasons why rates may reasonably be higher in that territory.

The first-class rate from New York City to Chicago, nearly 1,000 miles, is 75 cents; from Chicago to Omaha, 500 miles, 80 cents; from the Missouri River to Denver, short line, 538 miles, \$1.25; and from Denver to Ogden, 600 miles, \$1.64. The traffic manager of the Union Pacific Railroad was asked how, in view of the established scale of rates east of the Missouri River, he could justify his rates under consideration west of that river, and replied that the lower basis in force in the East was due to greater density of traffic and greater earnings.

We found in the Spokane case, with reference to the Great Northern and Northern Pacific railways, that the traffic and earnings of those transcontinental lines compare favorably with the strongest lines in the East. It may be instructive to state these facts with respect to the Union Pacific Railroad. For that purpose and for use in further considering the general reasonableness of these rates we give below two tables, the first showing gross earnings per mile, net earnings per mile, and ton-miles per mile upon all railroads of the United States, both as a whole and by the territorial groups as defined for statistical purposes, the Union Pacific being principally in groups seven and eight, and the second showing these same facts with respect to the different lines, including the Union Pacific, reaching Denver from the East.



## YEAR ENDED JUNE 30, 1906.

	Gross earnings per mile of road.	Income from operation per mile of road.	Number of tons carried 1 mile per mile of road.
Group I.....	\$15,528.00	\$4,579.00	743,634
Group II.....	22,517.00	7,641.00	2,443,924
Group III.....	13,789.00	4,058.00	1,713,615
Group IV.....	8,216.00	3,002.00	879,506
Group V.....	7,350.00	1,981.00	640,485
Group VI.....	8,690.00	3,136.00	811,977
Group VII.....	9,108.00	4,184.00	767,530
Group VIII.....	6,885.00	2,325.00	506,392
Group IX.....	5,848.00	1,533.00	421,150
Group X.....	9,532.00	4,166.00	572,574
United States, average.	10,460.00	3,548.00	982,401

## YEAR ENDED JUNE 30, 1907.

Atchison, Topeka & Santa Fe Railway.....	\$11,092.64	\$4,266.50	821,068
Chicago, Burlington & Quincy Railroad.....	9,218.28	2,653.70	802,722
Chicago, Rock Island & Pacific Railway.....	7,964.58	2,433.95	549,965
Missouri Pacific Railway.	6,620.41	1,909.80	569,930
Union Pacific Railroad..	15,144.12	6,547.99	1,146,918

The last table is for the year 1907, the first for the year 1906. The figures for 1907 somewhat exceed those for 1906, and for purposes of comparison we state here corresponding figures as to the Union Pacific for the year 1906.

In that year the ton-miles were 1,081,431, showing a density of traffic considerably in excess of the average for the whole United

States and materially in excess of every territorial group except Group II and Group III. The gross earnings from operation were \$13,465 per mile, exceeding by more than 25 per cent the average for the entire United States, substantially equaling Group III, and exceeded only by Groups I and II. Its net earnings from operation were \$5,962 per mile, exceeding by 75 per cent the average of the entire United States, and materially exceeding those for every group except Group II.

The Union Pacific Railroad Company, according to its operating report of June 30, 1907, embraces 1,901 miles of main track and 1,092 miles of branch lines, making a total of 2,993 miles. Its bonded indebtedness is \$100,000,000, at 4 per cent, being about \$33,000 per mile. Its common stock outstanding is \$195,000,000, its preferred stock \$100,000,000, making a total of \$295,000,000, or \$98,000 per mile. The report states that these stocks have been issued for the purpose of purchasing other stocks and that the amounts mean nothing when given in miles of road.

During the year covered by this report the road earned from operation \$15,000 per mile, and its net income from operation was \$6,547 per mile, or a total of \$19,678,798. After deducting interest on \$100,000,000 of funded debt and taxes, there would still remain from operation over \$14,000,000, or 14 per cent upon \$100,000,000 of capital stock. These sums, \$200,000,000, would equal about \$70,000 per mile for the system, and without doubt more than represent the fair value of the property

upon the basis of cost of construction or of cost of reproduction.

As already suggested, we can not in determining a competitive rate select that railroad which is the shortest or the most advantageously situated and limit the rate to what would allow that property fair earnings. We must consider this entire situation and determine a reasonable rate not merely with reference to the Union Pacific, but with reference to all lines serving these Colorado common points via reasonably direct lines.

Four different railway systems other than the Union Pacific reach Colorado common points from the Missouri River, namely, the Burlington, the Rock Island, the Santa Fe, and the Missouri Pacific. These defendants were asked to give the Commission some idea of the density of traffic upon their lines between the Missouri River and Denver. Their statistics are kept in such a manner that they were unable to furnish us the exact information desired, but they have given certain statistics which perhaps answer the same general purpose. Below is a table showing the total tons of freight from the Missouri River and points east to Colorado common points for the years 1899 to 1906, inclusive. It will be seen that the total tonnage is not large, but that there has been a substantial increase from 1899 to 1906.

The apparent decrease from the years 1901, 1902, and 1903 was accounted for by traffic officials by the fact that certain construction work under way in Colorado during those

years required the transportation of an unusual quantity of materials. The increase in Colorado business has not been as marked as in the general business of the transcontinental lines.

*Westbound tonnage into Colorado from Missouri River and east thereof, in tons.*

1899.....	281,379	1903.....	438,025
1900.....	351,871	1904.....	364,637
1901.....	454,732	1905.....	364,145
1902.....	505,923	1906.....	436,453

We were also furnished with statements showing the number of trains operated over various lines between Denver and the Missouri River, and one system was able to give us its tonnage and earnings by States. From all of this it fairly appears that the density of traffic on these lines from the Missouri River to Denver, except the Union Pacific upon the north and the Santa Fe upon the south, is not heavy, and that this is particularly true of the last 200 or 300 miles before reaching Colorado common points. The earnings upon this portion of the various systems are comparatively small. This is not, however, conclusive upon the reasonableness of rates now in effect. These lines must be considered in the nature of branch lines. The profit from this business does not accrue upon the 200 or 300 miles of railroad where it is the major part of the traffic, but upon the haul up to the Missouri River, where it is in the nature of surplus traffic.

In the *Burnham, Hanna, Munger case (supra)*, we found that the defendant carriers had for years maintained a line of proportional class rates between Chicago and the Twin Cities, applicable on traffic from the Atlantic

seaboard, one-third less than their local class rates between Chicago and the Twin Cities, and that their local rates had not thereby or therefore been pulled down or reduced. We can not accept the theory that if in this case the through rates from Chicago and St. Louis to Denver are reduced, like reductions in the local rates from Chicago or St. Louis to the Missouri River or from the Missouri River to Denver must automatically follow. If rates applicable only to through business and that are materially lower than the local rates can be maintained between Chicago and St. Paul, and in the many other instances which could be cited where the carriers adopt and maintain the same principle, without forcing reductions in the local rates, it is obvious that the same thing can be done between Chicago and the Missouri River or between Chicago and Denver. As has been seen, the class rates from the Missouri River to Denver, short line distance 538 miles, are on a scale of \$1.25 per 100 pounds, first class, and from Denver to Utah common points, about 650 miles, they are on a scale of \$1.64 per 100 pounds, first class. *Measured by any test these rates are in both instances unreasonable and excessive.* It seems obvious that they must be revised, either by voluntary action of the carriers in conformity with the principles announced in the *Spokane case (supra)*, or in some other proceeding before this Commission. For that reason no reduction of those rates will be ordered in this case, although upon the record we are convinced that they are unwar-

rantedly high, and that reasonable reduction therein would not work any undue reduction in the revenues of defendants. If those rates are reduced so that the combination on the Missouri River or on Denver results in reasonable through rates, it does not necessarily follow that these through rates must again be reduced. Certainly it is better in every instance where important readjustment of rates is necessary to have it worked out by the carriers or with their cooperation, if that be possible.

The present class rates from Chicago to the Missouri River are, in cents per 100 pounds, as follows:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate.....	80	65	45	32	27	32	27	22	18½	16

The present class rates from Chicago to Denver are, in cents per 100 pounds, as follows:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate.....	205	165	125	97	77	92	72	62	53½	46

being made up of the sums of the class rates from Chicago to the Missouri River crossings, as above, and the class rates from the Missouri River to Denver, as follows:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate.....	125	100	80	65	50	60	45	40	35	30

The present class rates from St. Louis to Denver are, in cents per 100 pounds, as follows:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate.....	185	145	115	92	72	84½	64½	57	48½	41

being made up of the class rates from St. Louis to the Missouri River, in cents per 100 pounds, as follows:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate.....	60	45	35	27	22	24½	19½	17	13½	11



and the above-named class rates from the Missouri River to Denver.

As hereinbefore stated, we find that this rate adjustment is unjustly discriminatory in favor of the Missouri River cities and against Denver. The through class rates from Chicago to Denver and from St. Louis to Denver are unreasonably high in and of themselves. The reduction of those rates as herein ordered will not involve any unreasonable or undue reduction of the revenues of the defendants affected thereby, and for these reasons and upon the whole record we are of the opinion that for the future reasonable class rates from Chicago to Denver should not exceed, in cents per 100 pounds, the following:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate.....	180	145	110	85	67	80½	63	54	47	40

and that reasonable class rates from St. Louis to Denver should not exceed, in cents per 100 pounds, the following:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate.....	162	127	101	80½	63	74	56	50	42	36

(Record, p. 33, 34, 35, 36, 37, 38.)

#### ASSIGNMENTS OF ERROR.

The assignments of error relied upon in this court are the following (Rec., p. 68):

3. Said Circuit Court erred in holding that the Interstate Commerce Commission was without power to make the order complained of.

4. Said Circuit Court erred in holding and decreeing that the order complained of entered by the Commission on March 2, 1909, was void and of no effect.

7. Said Circuit Court erred in holding that there was no inquiry by the Interstate Commerce Commission respecting the reasonableness or unreasonableness of the rates between Chicago and St. Louis and Denver other than on the zone theory of apportioning trade.

8. Said Circuit Court erred in permitting to be filed by complainants affidavits of James J. Hill, Marvin Hughitt, and E. P. Ripley in support of the application for a preliminary injunction.

#### **ARGUMENT.**

For the most part the question involved in this case will be determined by the decision of the court in No. 663. This is especially true if the court reverses the decree in 663. We contend, however, that even if that decree should be affirmed upon the ground that the order of the Commission therein would result in unjust discrimination against shippers not having the benefit of such order and undue preference to those shippers who would enjoy the rates prescribed by such order, still the decree in this case should be reversed because there is no allegation or proof in support thereof to the effect that the order herein would result in either unjust discrimination to shippers not having the benefit of such order or undue preference to shippers having the benefit of such order. The presumption which attaches to the validity of an order made by the Commission can not be overcome by a mere allegation in the bill of complaint or by the mere expression of opinions by inter-

ested parties. No showing was made by the bill or affidavits in support thereof that the carriers could not put the Commission's rates into effect and still receive ample revenue for all service performed for the public. Nor was there any showing that if the Commission's order be literally complied with it would result in any discrimination which the carriers could not remove without so reducing their total revenue as to result in confiscation. We here refer to brief and argument in support of the appeal in No. 663, and make the same so far as applicable a part hereof.

#### CONCLUSION.

The complaint before the Interstate Commerce Commission specifically attacked class rates from Chicago and St. Louis to Denver. The testimony before the Commission is not before the court, but in the absence of a showing that there was no evidence whatever upon which its findings could be predicated, it must be presumed that that evidence established that the rates complained of were unjust and unreasonable.

The Commission prescribed what, in its opinion, would be just and reasonable rates as maxima thereafter to be charged by the carriers. Every intendment of law and of fact supports the validity of the Commission's action. The wrongs and injuries resulting from practices existing prior to and at the time of the passage of the act to regulate commerce and its amendments were intended to be removed

and remedied by Congress. Long existence does not sanctify or render legal that which was illegal. The Commission has undertaken to prescribe, as a rule of conduct for the particular transportation embraced within its order, the principle that the longer the haul the less the rate per ton per mile. That rule has been affirmed and approved by this court in many cases. What is a reasonable rate is a question of fact whose determination by the Commission, in the absence of a showing of a deprivation of a constitutional right, this court will not review.

The decree of the court below should be reversed, with directions to dismiss the bill.

WADE H. ELLIS,  
LUTHER M. WALTER,  
EDWIN P. GROSVENOR,  
*Special Assistants*  
*to the Attorney-General.*

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INTERSTATE COMMERCE COMMISSION v.  
CHICAGO, BURLINGTON AND QUINCY RAIL-  
ROAD COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF ILLINOIS.

No. 641. Argued April 5, 6, 1910.—Decided May 31, 1910.

This case involves the same questions of law as were involved in the preceding case and is decided on authority thereof.  
171 Fed. Rep. 680, reversed.

THE facts, which involve the validity of certain orders of the Interstate Commerce Commission reducing railroad freight rates, are stated in the opinion.

*Mr. Wade H. Ellis* and *Mr. Luther M. Walter*, Special Assistants to the Attorney General, with whom *Mr. Edwin P. Grosvenor*, Special Assistant to the Attorney General, was on the brief, for appellant.

*Mr. William D. McHugh* and *Mr. Samuel A. Lynde* for appellees.

MR. JUSTICE MCKENNA delivered the opinion of the court.

This case was argued and submitted with Nos. 663 and 664, as involving the same general questions. It was disposed of in the court below with those cases in the same opinion, (171 Fed. Rep. 680,) and on the same ground, to wit, that the effect of the order of the Commission to enjoin which the suit was brought apportioned "out the country into zones tributary to given trade centers and not tributary to others," resulting in protection and favor to the first. The case is here on appeal from an order



granting a preliminary injunction, which was moved upon the bill (to which there was a demurrer by the Interstate Commerce Commission) and upon certain supporting affidavits.

The order enjoined was made by the Commission in a proceeding instituted before it by one George J. Kendall, in which he attacked certain rates charged by certain carriers from New York, Chicago, St. Louis, Omaha, and points taking similar rates to Denver, on the ground that the same were excessive and discriminatory, and attacked rates from Denver to Salt Lake City on similar grounds. By an amended complaint certain commodity rates were also attacked.

After hearing and argument the Commission made its report, from which the following is an extract:

"In the *Burnham, Hanna, Munger Case*, *supra* (14 I. C. C. Rep. 299), we found that the defendant carriers had for years maintained a line of proportional class rates between Chicago and the Twin Cities, applicable on traffic from the Atlantic seaboard, one-third less than their local class rates between Chicago and the Twin Cities, and that their local rates had not thereby or therefore been pulled down or reduced. We cannot accept the theory that if in this case the through rates from Chicago and St. Louis to Denver are reduced, like reductions in the local rates from Chicago or St. Louis to the Missouri River or from the Missouri River to Denver must automatically follow. If rates applicable only to through business and that are materially lower than the local rates can be maintained between Chicago and St. Paul, and in the many other instances which could be cited where the carriers adopt and maintain the same principle, without forcing reductions in the local rates, it is obvious that the same thing can be done between Chicago and the Missouri River or between Chicago and Denver. As has been seen, the class rates from the Missouri River to Denver, short

line distance 538 miles, are on a scale of \$1.25 per 100 pounds, first class, and from Denver to Utah common points, about 650 miles, they are on a scale of \$1.64 per 100 pounds, first class. Measured by any test, these rates are in both instances unreasonable and excessive. It seems obvious that they must be revised, either by voluntary action of the carriers in conformity with the principles announced in the *Spokane Case*, *supra* (15 I. C. C. Rep. 376), or in some other proceeding before this commission. For that reason no reduction of those rates will be ordered in this case, although upon the record we are convinced that they are unwarrantedly high, and that reasonable reduction therein would not work any undue reduction in the revenues of defendants. If those rates are reduced so that the combination on the Missouri River or on Denver results in reasonable through rates it does not necessarily follow that these through rates must again be reduced. Certainly it is better in every instance where important readjustment of rates is necessary to have it worked out by the carriers or with their cooperation, if that be possible.

"The present class rates from Chicago to the Missouri River are, in cents per 100 pounds, as follows:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate.....	80	65	45	32	27	32	27	22	18½	16

"The present class rates from Chicago to Denver are, in cents per 100 pounds, as follows:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate.....	205	165	125	97	77	92	72	62	53½	46

being made up of the sums of the class rates from Chicago to the Missouri River crossings, as above, and the class rates from the Missouri River to Denver, as follows:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate.....	125	100	80	65	50	60	45	40	35	30

"The present class rates from St. Louis to Denver are, in cents per 100 pounds, as follows:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate.....	185	145	115	92	72	84½	64½	57	48½	41

being made up of the class rates from St. Louis to the Missouri River, in cents per 100 pounds, as follows:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate.....	60	45	35	27	22	24½	19½	17	13½	11

and the above-named class rates from the Missouri River to Denver.

"As hereinbefore stated, we find that this rate adjustment is unjustly discriminatory in favor of the Missouri River cities and against Denver. The through class rates from Chicago to Denver and from St. Louis to Denver are unreasonably high in and of themselves. The reduction of those rates as herein ordered will not involve any unreasonable or undue reduction of the revenues of the defendants affected thereby, and for these reasons and upon the whole record we are of the opinion that for the future reasonable class rates from Chicago to Denver should not exceed, in cents per 100 pounds, the following:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate.....	180	145	110	85	67	80½	63	54	47	40

and that reasonable class rates from St. Louis to Denver should not exceed, in cents per 100 pounds, the following:

Class.....	1	2	3	4	5	A	B	C	D	E
Rate.....	162	127	101	80½	63	74	56	50	42	36"

An order was directed to be entered in accordance with those views, which was done, and the railroads were required thereby to cease and desist, on or before the first of May, 1909, and for a period of two years, to exact for the transportation of traffic rates in excess of those above mentioned, respectively, from Chicago and St. Louis to Denver, and to establish on or before that date and maintain said rates between said cities.

The railroads affected, to wit, Chicago, Burlington and Quincy Railroad Company, the Chicago, Rock Island and Pacific Railway Company, Chicago and Northwestern

Railway Company, Chicago, Milwaukee and St. Paul Railway Company, the Atchison, Topeka and Santa Fe Railway Company, Missouri Pacific Railway Company, Union Pacific Railroad Company, and the Wabash Railroad Company, filed a bill to enjoin the enforcement of the order.

In their bill the companies described their respective roads and the termini of the roads, and alleged that the companies were respectively engaged as common carriers in the transportation of property by railroad by continuous carriage or shipment from and to the points designated in the report and order of the Commission. The bill alleged the relation of the carriers to one another and the extent of their roads westward and eastward and their relation to roads east of Chicago and the Mississippi River. The manner of charging and adjusting rates is described in the bill and the classifications of freight which existed as in the bill in Nos. 663 and 664.

In the bill in those cases the Mississippi River was alleged to be a basing point for freight destined to the Missouri River cities. In the case at bar the Missouri River is added as a basing point in the making of rates for the transportation of merchandise originating east of the Mississippi River, destined to territory between the rivers and to the Missouri River cities and west thereof. And it is alleged that the making of such basing points "has been due both to natural physical conditions and to the natural development of railroad construction and operation to and beyond said rivers and in territory between the same, and has naturally resulted in the evolution and development of railroad transportation, and the business and commerce in and through Western territory."

The facts which caused such result are set out at length and are in substance that railroads were built westward to certain points and that other and independent roads were constructed farther westward, each road charging its

separate rate, and that the places to which and from which the roads were built were natural distributing centers, "and were able to compete on the basis of equality with each other in the distribution and sale of their merchandise."

The relation of the two rivers as basing points and why the Missouri was made one is set forth in the following paragraph:

"Your orators further aver that long prior to the construction of any railroad westward across the Missouri River to the city of Denver the said Missouri River had been made a basing point in the making of rates to territory west of said Missouri River, and that, as is above stated, for many years the only railroads serving the said Missouri River cities were lines of railroads entering said cities from the east and terminating there, and lines of railroad beginning at said cities and extending west therefrom, and that at the time the said four lines of railroad of your orators, the Chicago, Burlington and Quincy Railroad Company, the Chicago, Rock Island and Pacific Railway Company, the Missouri Pacific Railway Company, and the Atchison, Topeka and Santa Fe Railway Company, were constructed west of and across the said Missouri River to the city of Denver, or other Colorado common points, the said Missouri River cities and the commercial interests therein had become extensive and important, and the competition with the railroads whose lines terminated at said Missouri River cities had become so active and the competition between the several distributing points on said Missouri River and east thereof had become so extensive and important that the said four companies whose lines were extended across said river and westward therefrom were compelled by reason of commercial and competitive conditions to recognize, adopt and apply at said Missouri River cities the said system of basing rates on the Missouri River which had always

theretofore obtained as hereinabove set forth." That is, as had obtained on the Mississippi River.

The other allegations supplement the above and are substantially like those which formed the basis of the contentions made and argued in the other cases.

The bill, as we have said, was supported by affidavits. They were substantially the same and set forth the acquaintance of their makers with railroad construction, development and management. They set forth with detail the facts and circumstances which their makers conceived to be determinative of the questions involved and a justification of the system of ratemaking established by the companies, and which, they averred, affected "vitaly all the important lines of business of the Western country." They further averred that a change in the system, whereby the practices under it "should be forbidden, would be a change which would revolutionize the methods of doing business throughout the Western country, and would work injury to the west and its business, the extent of which would be so great as to be difficult of computation."

It will be seen, therefore, that this case and the other cases are alike except as to the points of destination of the roads and the cities that are concerned with the rates charged and reduced. This and they turn on the same question of the power of the Commission, the effect of its order on business conditions and the systems of ratemaking by the railroads, its effect upon the revenues of the companies, and by their reduction to cause a deprivation of the property of the companies without due process of law, in violation of the Fifth Amendment of the Constitution of the United States.

Further elaboration we think is unnecessary, and on the authority of cases Nos. 663 and 664 the decree of the Circuit Court is reversed and the case remanded with directions to set aside the injunction and dismiss the bill.

*So ordered.*